



**Michigan Department of  
Labor & Economic Growth**

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# **Freedom of Information Act**

# **Policy/Procedures/Guidelines**

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Department of Labor & Economic Growth  
Central FOIA Office  
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Lansing, Michigan 48909

## DEPARTMENT OF LABOR & ECONOMIC GROWTH

### FREEDOM OF INFORMATION ACT POLICY/PROCEDURES/GUIDELINES

#### Table of Contents

<b>I.</b>	<b><u>Policy</u></b> .....	1
<b>II.</b>	<b><u>Procedures/Guidelines</u></b> .....	2
	1. Bureau/Office FOIA Coordinator Activities .....	2
	2. FOIA Requests From Media and Other Particular Sources.....	2
	3. Verbally Requested Personal Information .....	3
	4. FOIA Requests Must Be In Writing .....	4
	5. FOIA Fees .....	5
	6. Inspection and Protection of Records .....	7
	7. Legislative Requests .....	12
	8. Executive Office Responses to FOIA Denials/Appeals.....	13
	9. FOIAs Involving Multiple DLEG Units/Other Departments .....	15
	10. Guide to Processing Personnel Related FOIAs .....	17
	11. Employment Histories .....	21
	12. FOIA Requests/Subpoenas for Former Employee Computer Files...	22
	13. Processing Subpoenas.....	23
	14. DLEG Litigation Coordinator.....	33
<b>III.</b>	<b><u>Attachments</u></b>	
	1. DLEG Organizational Chart	
	2. DLEG Boards, Commissions, Authorities	
	3. DLEG Bureau/Office FOIA Practices	
	4. Media Requests Routing Cover Sheet	
	5. Michigan Departments FOIA Coordinators	
	6. Attorney General DLEG Assignments	
	7. Subpoena Related Information	
	8. Example Response Letters	
	9. Records Management - Excerpts	
	10. DLEG FOIA Coordinators	
	11. DMB Procedure 2410.01 (FOIA)	
	12. FY08 FOIA Cost Guidelines/Invoice Form	

**DEPARTMENT OF LABOR & ECONOMIC GROWTH  
FREEDOM OF INFORMATION POLICY/PROCEDURE/GUIDELINES**

**I. Policy**

It is the policy of the Department of Labor & Economic Growth (DLEG) to fulfill the legislative intent of the state's Freedom of Information Act (FOIA)<sup>1</sup> and to provide public access to certain records and disclosure in accordance with the Act. A FOIA request is any written request for records or documents, regardless of whether the request mentions the FOIA or not. A FOIA request may be a part of much more extensive written communication that may not initially appear to be a formal FOIA request, in accord with the specific policy, procedure, or practice set forth within their respective bureau or office. Each bureau or office may have different statutes or standards that can impact whether information should be disclosed. If an employee has any doubt as to how a request for information should be handled, the employee should confer with his or her supervisor. The designated FOIA Coordinator for the bureau or office, or the Department Central Office FOIA Coordinator may also be consulted through supervisory chains.

As indicated in the FOIA pamphlet prepared by the Office of the Attorney General, in general, all records/information of a public body except those specifically cited as exempt under Section 13<sup>2</sup> are subject to disclosure in accord with the FOIA. The records covered include: correspondence (including e-mail), records maintained in databases, formal minutes of open meetings, informal notes or formal and informal recordings, officials' voting records, staff manuals, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written statements which implement or interpret laws, rules, or policies, including, but not limited to, guidelines, manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered.

It does not matter what form the record is in. The Act applies to any handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording. It includes letters, words, pictures, sounds, or symbols, or combinations thereof, as well as papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. It does not include computer software.

Appreciation is expressed to Stephen Geskey, Stephen Gobbo, and Thomas Quasarano for their review and input regarding the preparation of this document.

Melvin Farmer, DLEG FOIA Coordinator

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<sup>1</sup> 1976 PA 442.

<sup>2</sup> The FOIA is subject to amendment and reference should be made to the actual statute for revisions, additions, or deletions to ensure current exemptions and other requirements are properly applied.

## **II. Procedures/Guidelines**

When a DLEG office/bureau employee receives a written request for information under the Freedom of Information Act, the request must be immediately date stamped and forwarded to the Freedom of Information Act Coordinator that is designated for the employee's office or bureau. The DLEG is required by law to respond to requests within 5 business days after receiving the request by an employee—15 business days only if a 10 day extension period is invoked by the Freedom of Information Act Coordinator. Employees should not assume an extension shall automatically be claimed. Therefore, it is imperative that the employee immediately provide the office/bureau FOIA Coordinator with the request immediately. The DLEG is permitted to charge fees for the costs of providing requested information (see Section 5 of this manual). The fees may include charges such as labor, duplicating, mailing, and so forth. The FOIA Coordinator will work with staff in determining the proper costs and any fees that may be charged.

### **1. Bureau/Office FOIA Coordinator Activities**

- Logs FOIA request into the method used, based on the date of receipt by any employee, calculate the response due date based on the Freedom of Information Act, 1976 PA 442 (Extended response dates can only be based on criteria set forth in the FOIA.)
- Determines whether requested records/information exist in bureau/office.
- Determines whether part or all of requested records is exempt, and separates exempt from nonexempt records.
- Reviews records to be collected to determine estimated costs, if applicable to be charged; or waived due to indigency.
- Prepares fee estimates as necessary based on DLEG's applicable fee schedule and forwards the estimates to the Central FOIA Coordinator (or Designee) when a question about the appropriate good faith deposit arises.
- Pursuant to internal review with appropriate bureau/office staff, forwards response to the FOIA requester within 5 business days of receipt of the request or within 15 business days, if an extension was claimed. It is noted that the FOIA requires a response within the statutory timeframes, containing any claimed FOIA (Section 13) exemptions from release of records, however, the response need not be sent with all actual records/documents. This is particularly the case where a "good faith" payment is required.
- Where applicable, upon receipt of required payments, mails requested records.
- Consults with Central FOIA Coordinator and/or assigned Assistant Attorney General (AAG) regarding issues of concern regarding FOIA requests/responses
- Prepares proposed response for FOIA Coordinator if request was made directly to DLEG Director's Office.
- Provides Central FOIA Coordinator rationale/information to assist DLEG Director address appeals of non-disclosure of requested records/information.

## 2. **FOIA Requests From Media and Other Particular Sources**

The Office of Media & Public Relations shall be sent copies of FOIA requests received from the following sources:

The requester is a representative of or connected with the:

- Media (newspaper, TV, etc.)
- Union or union representative
- Political organization
- Hot issue in your unit/department
- Form letter
- Request pertains to memos from the Executive Office

If the request pertains to an open regulatory matter regarding:

- Informal settlement conference
- Prehearing conference
- Administrative hearing
- Court dates
- Other

This is necessary so that the Executive Office may be kept timely informed and/or aware of possible sensitive issues regarding department activities. The procedure to follow is:

- A. Written Requests – Copies should be immediately sent to the Media & Public Relations Office via their Routing Cover Sheet form (Attachment 4).
- B. Verbal Requests – The media requester is to be informed that all requests for copies of public records must be in writing; and/or refer the media requester to the Media & Public Relations Office (517) 241-1580.

## 3. **Verbally Requested Personal Information**

From time to time, DLEG staff receive verbal requests from other agencies or individuals (public, private, etc.) for personal information regarding state employees or clients. Typically, the requests seek information regarding social security numbers, date of birth, and/or home address/phone number. As you are aware, such information, regardless of the requester, is still subject to state/federal privacy statutes/regulations; and certain information may not be released without a signed release authorization from the individual(s), or a court order.

Employees are reminded that upon the receipt of a verbal request for personal information:

- A. Request that the requester fully identify themselves by full name and agency represented; and inform the requester that such a request must be made in writing or via email so that it can be determined whether the request comes from a legitimate source; or refer the requester to the agency's FOIA coordinator.
- B. If/when a written request for personal information is received by agency staff other than its FOIA coordinator, the request should be referred to and/or coordinated with the agency's FOIA Coordinator to:
  - Determine whether the requested personal information is releasable without a signed release authorization or court order.
  - Assure that the agency is in compliance with the appropriate state/federal statutes/regulations regarding personal information/privacy such as the HIPPA, the state/federal statutes protecting social security numbers, Employee Right-to-Know Act, etc.
  - In cases of litigation involving the agency/state, provide the agency a record of what, if any, information was released to whom, date of release, etc.

The above, as discussed with the AG's office, is not intended to diminish or question the authority of an agency to request personal, protected information, but rather to address the manner in which such verbal requests are addressed and processed by a DLEG agency.

#### **4. FOIA Requests Must Be In Writing**

All requests for information under the Freedom of Information Act must be in writing, including facsimile or electronic mail; and requesters should provide their name, address, and date of request. This is necessary for the DLEG office/bureaus to document that a request has been properly made, processed, and mailed (FOIA responses involving an extensive amount of records likely will need to be mailed to an actual postal address and delays will ensue if a requestor only has provided an e-mail address or phone number); and to assist the DLEG in determining "excessive" requests for the same information.

## 5. FOIA Fees

Section 4 of the FOIA provides that a public body, like the DLEG offices/bureaus, may charge for actual costs for public records searches, copying for inspection, or providing copies. The fees allowable include costs for actual mailing; actual incremental cost for copying or publications, including labor; and the cost of search, examination, review, and deletion and separation of exempt from non-exempt information. The DLEG office/bureau labor fee includes the hourly wages/benefits of employees capable of retrieving the necessary requested information, which generally is based on the lowest paid classified employee and/or, sometimes, a specialist in the department.

The FOIA also allows the DLEG offices/bureaus to require, at the time a request is made, a good faith deposit, not to exceed one-half (½) of the total fees, for projected costs exceeding \$50.

The DLEG fee schedule specifies the rates that will be charged for labor, copying, and other necessary expenses permitted under the Act. The DLEG fee schedule guidelines (Attachment 11) are available from the DLEG Central FOIA Coordinator and are updated periodically (see attached).

Individuals who submit an affidavit or other proof showing that they are receiving public assistance or showing inability to pay costs because of indigency shall not be charged for the first \$20.00 of the fee for each request. Determination of eligibility for fee waivers or fee reductions shall be made by the affected DLEG offices/bureaus.

Note: Some bureaus/offices have fee charges mandated by other statutes or regulations; and may opt to deviate from certain fees, excepting the hourly rate charges per Section 4 of the FOIA (See Section 6 B of this manual).

### General Labor Cost Guidelines

1. Labor costs for duplication of records will be calculated using the hourly wage of the department's lowest paid employee. The department will utilize the most economical means available for making copies of public records. The per copy for labor and material will be based on the department's reports for such expenses for the applicable fiscal year.
2. Labor costs for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt information, or any part thereof; an labor costs for the search and retrieval of computer records, if the search and retrieval require specialized knowledge of a program or database, will be calculated using the hourly wage of the department's lowest paid employee capable of conducting the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt information, or any part thereof. The hourly wage will be based on the department's payroll detail for the applicable fiscal year.

3. Labor costs for monitoring an inspection of original records will be calculated using the hourly wage of the department's lowest paid available employee. The hourly wage will be based on the department's payroll detail for the applicable fiscal year. Note: Section 3(3) of the FOIA provides, in pertinent part, that "[a] public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction."
4. Fees will be uniform and not dependent upon the identity of the requesting person.
5. Pursuant to Section 4(3) of the FOIA, the DLEG has determined that a fee will not be charged for the necessary copying of a public record for inspection or for providing a copy of a public record; for mailing costs; for the search, retrieval, examination, review and separation and deletion of exempt from nonexempt information, or any part thereof; or for monitoring an inspection of original records, where the total fee is lower than \$25.00.



## **6. Inspection and Protection of Records**

MCL 15.233, Section 3(3) of the state's Freedom of Information Act (FOIA)<sup>3</sup> provides that:

“A public body shall furnish a requesting person a reasonable opportunity for inspection and examination of its public records, and shall furnish reasonable facilities for making memoranda or abstracts from its public records during the usual business hours. A public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions. A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction.”<sup>4</sup>

The following provides guidelines regarding the onsite inspection, examination, and protection of the department's original public records.

### **A. Records Inspection Appointments**

Any person or persons making a request (by letter, facsimile, or electronic mail), via the FOIA, to inspect department records must make an appointment with the affected unit's FOIA Coordinator (or assignee) during the unit's regular business hours. After the issuance of the department's written notice in response to a request to inspect records, appointments should usually occur no less than ten business days after the appointment request to allow the unit(s) to make appropriate arrangements to:

- Find and gather the requested information, if available;
- Provide reasonable, secure facilities for inspection and examination;
- Provide adequate protection of original public records; and
- Coordinate regular department/unit functions while the inspection occurs.

### **B. Chargeable Fees/Costs**

The FOIA and Department of Management and Budget (DMB) Procedures (2410.01 - Attachment 10) provide that a public body may charge the costs for providing copies and protecting public records. Except as may be provided in another Act, the fee can be no more than the:

- Actual mailing costs; and

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<sup>3</sup> Language current as of January 24, 2008: you are reminded to check the current statute for any changes or updates.

<sup>4</sup> See MCL 750.491, The Michigan Penal Code, 1931 PA 328, provides for certain penalties for the “willful” mutilation or destruction of State agency records. This is one reason for agency personnel to supervise original document inspection in accord with the FOIA.

- Actual incremental cost of duplication or publication, including labor, calculated using the hourly wage including fringe benefits, of the lowest paid, full-time, employee capable of performing the required tasks;
- Cost of search, examination, review, deletion and separation of exempt from non-exempt information, calculated using the hourly wage of the lowest paid, full-time, employee capable of performing the necessary tasks.
- An hourly labor fee, including benefits, based on the lowest paid full-time permanent clerical employee, for supervision required to protect the public records from loss, unauthorized alteration, mutilation, or destruction. Also, a per page fee may be charged for necessary copying of records for inspection.
- Fees are not to be charged for the cost of examination, review, deletion and separation of exempt from non-exempt information, unless failure to charge a fee would result in an unreasonably high cost to the department, and the public body identifies the nature of the unreasonably high costs.
- Fees may be waived or reduced if the public body determines that a waiver or reduction is in the public interest.
- If a requestor files an affidavit stating that he/she is a recipient of public assistance, or stating facts showing an inability to pay the cost due to indigency, the public body shall waive the first \$20 of the fee for each request. You may find that certain news media outlets will ask for a waiver of fees due to public interest. The federal FOIA provides for such waiver, however, the Michigan FOIA does not require a waiver. The general DLEG policy is fees are not waived except for indigency. Consult with the Department FOIA Coordinator if any questions arise.
- A good faith deposit from the requester, of not more than ½ of the total fee may be requested by the agency if the anticipated fee amount exceeds \$50.
- FOIA fees are not to be charged for public records prepared under an act or statute specifically authorizing the sale of those records to the public. The records are to be released in accord with the respective enabling statute and payment of the statutory fees.

#### C. Fee/Labor Charges

##### Copying

- \$.25 cents per page for all “on-site” copy machine costs (includes all labor, paper and toner costs).

- Actual costs for any “off-site” copies that require duplication by a private copy center.

Mailing – Use actual mailing costs. To obtain these costs:

- Bureaus/Offices – Use amount based on normal mailing procedures.
- Central Office – Contact the Central FOIA Coordinator at (517-373-0194).

### Labor Costs

DMB Procedure 2410.01 indicates that a department may charge the hourly rate, including benefits, of the lowest paid full-time, employee capable of performing the necessary tasks. A General Office Assistant 5 for FY08 at \$23.00/hr. shall be used in charging for copying costs and monitoring the inspection of original records.

Charge labor costs for the following:

- Copying that takes longer than one-half hour
- Assisting with on-site review or security of records

Note: Charge labor costs for the following three items are generally charged only if bureau/office staff must spend more than one-half hour total in performing them. Explain the reason for these charges in the response letter.

- Locating and retrieving public records
- Reviewing records
- Separating exempt from nonexempt materials
- Securing records during on-site inspections

Charge for labor costs using the hourly wage and benefits of the lowest paid DLEG employee capable of performing each of the above tasks.

Note: For certain confidential/exempt records or portion of records, the capable employee may necessarily have to be a professional level employee capable and/or authorized to determine exempt from non-exempt confidential information. In these situations, charge the actual hourly wage, including benefits, of the professional level employee.

### Other:

- Photo shoots - \$1.00 per page
- Photo discs - \$15.00 each
- Audio/Video tapes - Actual cost of tape and duplicating
- Transcripts and other documents involving special handling - may incur special fees based on the cost to be paid to a professional for transcribing

or duplicating the record. For example, if there is no existing copy of a transcript in possession of the Department but a court report was used at a hearing to create a future record (when transcription is requested by a party and the record is then created); or duplication of unusual documents due to color or size, e.g. blueprints. The requester can be required to pay a “good faith” payment before record duplication or a request is made to an independent court report to transcribe that person’s notes. In most instances, unless an actual transcript exists in the Department, the requester may be referred to the court reporting services to make his or her own arrangements for transcripts. Note: If there is an existing transcribed record in the Department’s possession, the regular photocopying or other duplication costs are to be charged for any page or portion that must be disclosed/released.

Based on the costs and the amount of records to be inspected, the affected unit should inform the requester that there may/will be some costs involved regarding their inspection visit. In particular, estimates can be made based on the projected hours needed to inspect the records; and the number pages to be copied. For example:

4 hours for labor to secure records @ \$23.00/hr =	\$ 92.00
60 pages to be copied @ \$.25/page =	<u>15.00</u>
Estimated total =	\$107.00

The projected cost should also determine whether the affected unit requests a 50% good faith deposit prior to the inspection appointment.

All fee payments should be made payable and mailed to:

State of Michigan  
Department of Labor & Economic Growth  
Office Services Mailroom  
7150 Harris Drive, P.O. Box 30015  
Lansing, MI 48909

Pursuant to Section 4(3) of the FOIA, the DLEG has determined that a fee will not be charged for the necessary copying of a public record for inspection or for providing a copy of a public record; for mailing costs; for the search, retrieval, examination, review, and separation and deletion of exempt from nonexempt information, or any part thereof; or for monitoring an inspection of original records, where the total fee is lower than \$25.00.

#### D. Facilities

The affected unit shall prepare/provide an appropriate space at the agreed site for the requester to inspect the requested records.

#### E. Record Preparation

The affected unit shall:

- Gather from all department sources the requested records to first review to determine whether there is exempt information that needs to be segregated and/or redacted prior to inspection.
- Take the appropriately reviewed records to the designated secure location where the requester will be allowed to inspect them.

#### F. Inspection of Original Records

- A staff member must be present at all time during the inspection of department records if any original records are involved.<sup>5</sup>
- Allow the requester to review/identify the records desired to be copied by placing a yellow “post-it” sticker or paper clip on each page. Note: Wait until all pages are identified prior to making any copies; and dependent upon the number of copies to be made, advise the requester that the copies may have to be mailed the next business day.
- In order that records/documents remain together as filed, do not allow the requester to un-staple/un-clip records without supervision.
- The requester is not to be allowed to remove documents from files or from the premises unless those documents are copied specifically for the requester by staff of the affected office/bureau.
- A public body is only required to make the records available for inspection and/or copying. It is not required to explain or interpret the contents of the records. Thusly, the staff assigned to secure the records should not engage in discussions with the requester regarding the content or interpretation of the records being inspected. If the requester has questions, tell him/her to submit the questions in writing back to the department or affected unit.
- A public body is not required to create, summarize, or make a compilation of voluminous documents.

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<sup>5</sup> MCL 750.491, The Michigan Penal Code: 1931 PA 328, provides for certain penalties for the “willful: mutilation or destruction of State agency records. This is one reason for agency personnel to supervise original document inspection in accord with the FOIA. If there is an attempt to mutilate or destroy documents, the supervising employee is expected to immediately terminate the inspection and report the situation to supervisory personnel. On the other hand, the employee is not expected to physically restrain or confront the individual engaged in the misbehavior.

Note: The staff person(s) in the room protecting the original records are not expected to explain the contents of the records being inspected.

## 7. **Legislative Requests**

In responding to written requests for public records made by Michigan legislators and members of congress under the FOIA, the DLEG offices/bureaus, pursuant to Section 4(1) of the FOIA, and subject to the conditions set forth below, may waive fees for providing copies of public records when the affected DLEG office/bureau determines that a waiver of fees is in the public interest because the affected DLEG office/bureau considers the furnishing of the public records as primarily benefiting the general public. In order for such a waiver to be granted, all of the following conditions must apply:

- Total costs in processing FOIA request do not exceed \$50;
- The FOIA request is not made on behalf of a third party; and
- The FOIA request is not made by the legislator/congressman for his or her personal interests, or for other non-legislative business.

Note: Copies of written legislative requests must be sent to the DLEG Executive office and responses coordinated accordingly with appropriate Executive Office staff, prior to the release of the requested information.

## **8. Executive Office Responses to FOIA Denials/Appeals**

Section 6(1) of the state's FOIA requires that DLEG designate an individual as its FOIA Coordinator to be responsible for accepting and processing requests for DLEG records; and be responsible for approving and denying denials of disclosure in whole or in part. Melvin Farmer was designated (January 22, 2004) as DLEG's Central FOIA Coordinator and, as such, processes most FOIAs regarding DLEG Executive Office requests. Pursuant to Section 6(3) of the FOIA, there are designated FOIA liaisons, as assigned, in DLEG's various bureaus/offices (+28) to perform similar functions for their respective agencies.

In regard to appeals of disclosure denials, Section 10 of the FOIA requires that all written appeals be submitted to the Director of DLEG who must respond within 10 business days by issuing a written notice indicating one of the following:

- Reversal of the disclosure denial
- Upholding of the disclosure denial
- Reversing in part and upholding in part the disclosure denial

Mr. Stephen Geskey and Ms. Susan Corbin have currently been designated to assist the Director to "receive and respond" to Freedom of Information Act appeals for the Department in accordance with MCL 15.240, Section 10 of the FOIA.

### **Standardized Denial/Appeal Response**

The DLEG FOIA Denial/Appeal notice language has been standardized, in accordance with the above, to read as follows:

"Under the FOIA (MCL 15.240), you may submit a written appeal regarding the denial of any portion of your FOIA request to Keith W. Cooley, Director, Michigan Department of Labor & Economic Growth, Attention: Stephen M. Geskey, Ottawa Building, 4<sup>th</sup> Floor, P.O. Box 30004, Lansing, Michigan 48909. Your appeal must include the word "appeal" and state the reason or reasons for reversal of the denial(s). You may also seek judicial review in circuit court within 180 days after the Department's notice of final determination. If you prevail in such action, the court shall award reasonable attorney fees, costs, and disbursements. If the court finds the Department's action(s) to be arbitrary and capricious, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00."

The current processing of appeals is as follows:

When appeals of FOIA denials by any DLEG unit are made to the Director's office, they are sent to the Central FOIA Coordinator to provide background information to assist the Director in preparing the appropriate response. This information is gathered as follows:

- The Central FOIA Coordinator researches the disclosure denial made by the DLEG bureau/office to determine whether the unit's denial was in accordance with the FOIA, Attorney General Opinions, and/or Appellate Court decisions regarding the FOIA.
- The Central FOIA Coordinator contacts the bureau/office regarding their reasons for denial; and also determines whether an extension of the 10 business days response period is necessary.
- The Central FOIA Coordinator confers with the designated Appeals Officer to provide any appropriate assistance.
- When signed by the Appeals Officer, the written response letter is forwarded to the Central FOIA Coordinator's office which makes and sends copies of the appeal response to the appropriate bureau/office and mails the original to the requester.
- The request is kept on file for a minimum of one year from the date of receipt per Section 3(2) of the FOIA. The department also retains its written notice and related materials for a minimum of one year.



## 9. FOIAs Involving Multiple DLEG Units/Other Departments

The purpose of this guideline is to provide guidance in the processing of FOIA requests involving multiple DLEG units. Note: A FOIA request received by any DLEG division or any of its employees is a FOIA request to the DLEG.

### A. FOIAs Related to the Governor, Lieutenant Governor, and State Legislators

**Do not refer FOIA requests to the Governor, Lieutenant Governor, the Executive Office of the Governor or Lieutenant Governor, or employees thereof; or to State Legislators. The aforementioned are exempt from most provisions of the FOIA per Section 2(d)(i) and Attorney General Opinion No. 6390.**

### B. FOIA Request(s) Involving DLEG Multiple Divisions/Units

#### Situation

Some FOIA requests to a DLEG unit may also request information/records that is in another DLEG unit. For instance, the Bureau of Construction Codes (BCC) sometimes receives FOIA requests for records/information related to its, as well as, the Fire Services unit's activities. Thusly, even though not in the BCC, the BCC cannot certify that the requested Fire Services records do not exist in the department.

### C. Processing Scenarios

1. Extension of Response Time—Generally, the unit receiving the abovementioned multiple division FOIA request should, per Section 5(6) of the FOIA, issue a notice to the requester extending the period for response by an additional 10 business days—stating that the additional time is needed to determine the existence of records/information in multiple divisions of the department.
2. Referral to Other Units<sup>6</sup>—A FOIA request or portion of a FOIA request that involves another DLEG unit should be immediately forwarded to that unit for response.
3. Coordinated Response—The units involved should coordinate their responses either separately or as one united response that addresses all portions of the FOIA request, including applicable costs to process the FOIA.

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<sup>6</sup> Note: A referral to another DLEG bureau or work unit, however, does not extend the statutory deadline from when the FOIA request was first received by an employee in DLEG.

D. FOIAs Related to Other Departments

It is the general practice of all Michigan Departments that FOIAs not specifically addressed to them are not to be forwarded (I.D. mail, fax, email, etc.) or directly referred to them. Such FOIAs are to be summarily denied. If the information requested is known or suspected to be in another department, see Example 6 of Attachment 8 (Example Response Letters) for the suggested response format that can be used.

## 10. Guide to Processing Personnel Related FOIAs

The following is intended to provide guidance regarding the release of personnel related information requested via the state's Freedom of Information Act (FOIA) and the Bullard-Plewcki Employees Right-to-Know Act (ERKA), 1978 PA 397.

**Please note that any requests for personnel related information on employees in your bureau should be directed to the Office of Human Resources. No employee information in the supervisor's possession should be provided or released to anyone without first contacting OHR.**

### A. Freedom of Information Act Exemptions

#### 1. Non Releasable Information

The DLEG may exempt from disclosure certain personnel related information/records unless:

- Pursuant to a signed and dated court; or
- After the informed written consent has been obtained from the person whom the requested information/records are about.
- When a valid subpoena (signed by lawyer or judge) is received by a DLEG employee for access/copying of public records, unless otherwise arranged, it should immediately be sent/faxed to the DLEG Central FOIA Coordinator for processing.

Generally, without the informed written consent of the person involved, DO NOT RELEASE<sup>7</sup>:

- Any information of a personal nature that would constitute a clearly unwarranted invasion of an individual's privacy—Section 13(1)(a) of the FOIA.
- Any records/information specifically described and exempted from disclosure by another statute or regulation—Section 13(1)(d) of the FOIA.
- Any information/records subject to the physician-patient privilege, psychologist-patient privilege, the minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule, e.g. attorney work products—Section 13(1)(h).

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<sup>7</sup> Again, for the FOIA exemptions referenced below from Section 13 of the FOIA, you should consult the current statute as revisions may have occurred changing what can be claimed or the renumbering/relettering of the exemptions.

- Test or interview questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure outweighs the public interest in nondisclosure—Section 13(1)(k).
- Medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation—Section 13(1)(l).
- Information or records that would disclose the social security number of any individual—Section 13(1)(w).
- Any interview notes regarding candidates, including communications and notes within DLEG or from other entities regarding candidates.
- Certain investigative records compiled for enforcement purposes, such as documents gathered regarding a sexual harassment investigation or illegal discrimination—Section 13(1)(b).
- Any school transcripts and related educational records covered under the Family Educational Rights and Privacy Act of 1974 (Section 13(2) of the FOIA).

B. Releasable Information

- Form C-47 and accompanying memo.
- Relevant correspondence/memos.
- Successful candidate's resume with personal info redacted.
- Unit's memo/recommendation to fill position to DLEG/OHR and EEO/AA Officer, including attachments of:
  - Candidate comparison chart
  - Position description
  - Affirmative Action Assessment
  - Applicant notice letter, ads, other announcements
  - Certification of eligible request form/attachments
  - List of unsuccessful candidates (redact addresses, social security number, phone number)
  - Position selection criteria
  - Civil Service register (redacted)

- Release only the successful applicant’s resume, with appropriate redactions.
- Indicate appropriate MCL 15.243 Section 13(1) as reasons for denial in response letter.

Note: After a candidate has been officially hired, it is advised that non-exempt records, emails, handwritten notes, etc. no longer pertinent to the process be routinely culled.

C. Employee Right-to-Know Act (ERKA)

- Under the ERKA the definition of “personnel records” is not the intended meaning in the Michigan Freedom of Information Act exemption (Court Case Newark Morning Ledger Co. v. Saginaw County Sheriff (1994) 514 N.W.2d 213. 204 Mich. App. 215.)
- Provision of ERKA defining personnel records to exclude employee references supplied to any employer if identity of person making reference would be disclosed does not require reference to be in certain form. Michigan Professional Employees Soc. v. Department of Natural Resources (1992) 482 N.W.2d 460, 192 Mich. App. 483.
- Handwritten notes that are taken during employment interview for promotion are “personnel records” that should be made available to employee under ERKA when requested. Michigan Professional Employees Soc. v. Department of Natural Resources (1992) 482 N.W.2d 460. 192 Mich. App. 483.

Disciplinary Actions MCL 423.506, Section 6 of this Act states:

“(1) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer’s organization, or to a party who is not a part of a labor organization representing the employee, without written notice as provided in this section. (Emphasis added).

(2) The written notice to the employee shall be by first-class mail to the employee’s last known address, and shall be mailed on or before the day the information is divulged from the personnel record.

(3) This section shall not apply if any of the following occur:

- (a) The employee has specifically waived written notice as part of a written, signed employment application with another employer.

(b) The disclosure is ordered in a legal action or arbitration to a party in that legal action or arbitration.

(c) Information is requested by a government agency as a result of a claim or complaint by an employee.”

A sample notification letter (No. 9 – Employee Right-to-Know Notice) is in Attachment 8, Example Response Letters.

## 11. Employment Histories

Based on research of AG Opinions, Court Decisions, and discussions with Assistant AGs, the following information in employment histories may be released/not released<sup>8</sup>:

### A. Releasable Records/Information

- Number of days absent from work, including annual/medical leaves
- Salary history
- Employment dates
- Performance evaluations
- Race/sex
- Interim ratings (Considered to be disciplinary action; thusly, if disclosed to a party **outside** the department or labor organization that represents employees position, a **written notice** of the disclosure must be mailed to the employee's last known address on or before the day the disciplinary related information is divulged.)

### B. Redactable/Non-Releasable Information

- Personal information constituting a clearly unwarranted invasion of an individuals privacy, or exempt from disclosure by state/federal statute or regulation, including:
  - Social Security numbers
  - Employee ID numbers
  - Home telephone number
  - Home address (unless related to a union request for a list of the names and home addresses of public employees)
  - Medical information
  - Age

Note: In some instances, the above information may be released if:

- There is **written authorization** from the affected individuals and there are no state/federal statutes/regulations prohibiting the release of the requested information.
- The information relates to the individual requesting it, unless a state/federal statute/regulation prohibits the disclosure of certain information.

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<sup>8</sup> Inquiry should be made to the Department FOIA Coordinator if there is any uncertainty as to what can be released. Future case law decisions or legislation could change the Department's position or requirements about releasing certain records.

## **12. FOIA Requests/Subpoenas for Former Employee Computer Files**

Periodically, DLEG receives requests for copies of all emails, computer entries, and computer records from computers of former employees. Per dialogue with the Michigan Department of Information Technology (MDIT), the following may be of assistance in responding to such requested subpoenas:

1. MDIT owns the computer equipment assigned to DLEG employees
2. When staff leave a DLEG unit, the MDIT removes all hard disk drive contents and re-load a standard set of software tools on the computer for reassignment.
3. All email records have a 30-90-day retention schedule and these files are generally purged after the 30-90 days.
4. Depending on the employee's date of departure, the date of the requests/subpoena and/or reassignment of their computer, the data requested/subpoenaed may not be available.
5. In some instances, MDIT indicates that it may be possible to restore backup tapes of email storage and retrieve information at the estimated cost of \$100.00 or more (see attached).
6. MDIT indicates that all email records have a 90 day retention schedule after which the files are purged. Per the following MDIT spreadsheet, the estimated cost to retrieve emails from tape backups is about \$100.00; and if there are numerous emails from various types or special circumstances, the cost may be greater:

AGENCY INFORMATION	DLEG (CIS)	DLEG MSHDA	DLEG UIA
NAME OF MS-EXCHANGE ADMINISTRATOR	RANDY ROBB	RANDY ROBB	RANDY ROBB
DO YOU CURRENTLY HAVE AN EMAIL RETENTION POLICY?	NONE	NONE	NONE
DO YOU HAVE OFF-SITE STORAGE FOR BACK-UPS	YES	YES	YES
TAPE RETENTION TIME	30 DAYS	30 DAYS	30 DAYS
RESTORE FROM TAPE COST IF KNOWN	UNKNOWN, GUESTIMATE @ \$100	UNKNOWN, GUESTIMATE @ \$100	UNKNOWN, GUESTIMATE @ \$100



### 13. Processing Subpoenas

The following (excerpted from several state agencies) provides information that may be useful in the processing of subpoenas. Note: When uncertain about a particular facet of a subpoena, the Agency should contact the Assistant Attorney General (AAG) assigned to your Agency for clarification or if Agency management personnel believe there is a basis for filing a motion in court to quash the subpoena. This document also includes current DLEG Agencies that have developed their own internal procedures to process subpoenas.

A subpoena is a legal document requiring a person to appear in court to give testimony or to produce specified records. A subpoena may also require a person or an Agency to deliver specified records to a court or to an attorney. A subpoena should have a witness fee check attached to be valid. A subpoena has the same impact as an order from the court. Your Agency may need to contact the Assistant Attorney General (AAG) assigned to your Agency and ask for clarification, especially if it is for staff to appear and/or provide copies of a large number of documents.

#### Definitions

<u>Agency/Staff</u>	The DLEG agency or staff to which a subpoena is directed/delivered to.
<u>FOIA</u>	A <u>Freedom of Information</u> (FOIA) is a <i>written</i> request submitted to a public body's FOIA coordinator that describes a public record sufficiently to enable the public body to find the public record. The Act also provides that "[an] employee of a public body who receives a request for a public record shall promptly forward that request to the Agency's designated FOIA Coordinator.
<u>Subpoena</u>	A <u>subpoena</u> is an order to cause a witness to appear in court and give testimony; provide documents by U.S. mail; and/or testify regarding Agency documents. <u>Note: If an employee is ordered to appear in court, the employee must appear unless otherwise advised by the Assistant Attorney General (AAG) assigned to the Agency.</u>
<u>Subpoena Duces Tecum</u>	A subpoena duces tecum is an order to produce a document. Such a subpoena may ask to have documents presented for copying purposes. <u>Note: All subpoenas must be responded to in some way the Agency. Questions should be directed to the Assistant A.G. assigned to the Agency ASAP.</u>

### Deposition

A “deposition” is a question and answer session conducted during the discovery phase of a lawsuit or contested case. It typically takes place at the office of one of the attorneys representing a party to a civil or administrative action. If employees are called as a witness to testify at a deposition, they will be placed under oath and asked questions by the attorneys representing the parties to the action. These questions and employee answers will be transcribed by a court reporter. During the deposition, the attorneys may interrupt and raise objections. Because there is no judge present to rule on the objections, answers are generally to be subject to objections where the attorneys do not agree about the fine points of evidentiary admissibility. If a question raises the spectre of unauthorized disclosure of personal information, consult with the department attorney before responding.

### Hearing

A “hearing” is usually a formal proceeding before a judge or magistrate. At a hearing, staff testimony is generally taken under oath and transcribed by a court reporter into a permanent record. Unlike deposition testimony, because a judge or magistrate is present, whenever objections are raised by the attorneys, the judge or magistrate may rule on the objections. A “hearing” may also involve an administrative contested case or other proceeding and generally, an employee may be directed by supervisory personnel to attend without the issuance of a subpoena. If a subpoena for an administrative proceeding was issued, it may be pursuant to a Court Order or specific statutory authority granted to the administrative agency. Failure to appear may carry the same burdens and punishments as if the subpoena was issued by a judge in a court of record.

### Subpoenas Issued By a Court or Attorney

A subpoena must:

1. Be entitled in the name of the People of the State of Michigan.
2. Be imprinted with the seal of the Supreme Court of Michigan or in a format approved by the Michigan Supreme Court.
3. Have typed or printed on it the name of the court in which the matter is pending.
4. State the place where the trial or hearing is scheduled.
5. State the title of the action in which the person is expected to testify.

6. State the file designation and number assigned by the court; and judges cannot compel disclosure of confidential information to other persons as his/her verbal or written orders are not court orders.

#### Legal Basis for an Agency to Issue a Subpoena<sup>9</sup>

An Agency authorized by statute to issue subpoenas when a written request is made by a party in a contested case, shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the protection of evidence including books, records, correspondence and documents in their possession or under their control, if the Agency is satisfied the basis for issuing the subpoena conforms to pertinent Court Orders or specific statutory requirements. The Agency shall revoke a subpoena if it discovers the circumstances warrant this action to prevent misuse or abuse of Agency subpoena authority. The Department of Attorney General should be consulted about any unusual situation, and particularly if a subpoena was issued based on representations made by an attorney, e.g., counsel for a party or someone else other than the State agency. Witness fees shall be paid to subpoenaed witnesses in accordance with Sec. 2552 of the Revised Judicature Act, 1961 PA 236..

#### Who Receives Subpoenas

A subpoena may be addressed to a specific employee identified by name (Example: Mel Farmer); a person in a position within a facility or bureau/office (Example: Director); or to a facility or bureau/office (Example: Office of Human Resources). Note: Your Agency, if, not already done, should consider designating a person or persons as a Subpoena Coordinator to assure that subpoenas are appropriately processed.

#### Who Issues Subpoenas

Court Rules allow for a subpoena under judicial authority to be issued by a judge or an attorney, or only in accord with specific provisions contained in a Court Order, e.g., for only certain purposes or only if certain other conditions are met. A subpoena can be signed by a judge, an attorney, or a court clerk or, in limited situations under specific State statutes by a specific administrative official. Note: An “administrative subpoena,” that is issued or signed by the proper official may not conform to the same exact form or appearance as a SCAO approved subpoena. For example, the Michigan Civil Service Commission makes use of its own form subpoena for its purposes. A signature is considered valid if it is hand written, stamped, or computer generated.

#### Acceptance of Subpoenas

A specific bureau/office person should be designated to accept service of subpoenas on behalf of employees at their work locations. Because legal consequences are

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<sup>9</sup> While some statutes do provide for agency subpoena authority, this authority is not always a general grant of authority to issue a subpoena unless a Court Order is obtained.

attached for failing to properly comply with or contest a subpoena, the existence of one person authorized to accept, process, and route subpoenas will reduce the prospect of a subpoena being overlooked or otherwise not followed. If a subpoena is received for an individual not at your location, do not forward it. The subpoena should be returned with a cover memo, stating the person is not at this work location, and that the Agency is not authorized to accept on his/her behalf. If the person works at another DLEG location, do not forward it, but do provide the correct address.

Since most subpoenas are a form of a court order, some may require instruction from the AAG assigned your unit prior to any action. Upon acceptance of a subpoena, it must be faxed/sent to the appropriate staff/AAG for review. Include in a cover page indicating intent to comply, or not comply, and any concerns.

- Only designated persons are authorized to accept service for the Department and the Director. A subpoena should never be accepted on behalf of the DLEG, the Director, or the State of Michigan unless you have designated as the authorized recipient.

#### Personal Service/Certified Mail

As previously stated:

- DO NOT FORWARD SUBPOENAS TO OTHER LOCATIONS FOR HANDLING. If your Agency does not have the requested documents, the subpoena should be returned to the sender with a cover memo stating such and, if known, advising where said documents may be located. A subpoena should not be accepted if the person named (employee is on a leave and not expected back to work within a reasonable time frame). For example, if an employee is on extended medical leave, or has just begun a two-week vacation, do not accept service of a subpoena on that employee's behalf. If personally served (not by mail), advise the process server or person delivering the certified mail or subpoena that the employee is on a leave and that the Agency is not authorized to accept service of the subpoena on his/her behalf. In accordance with the FOIA, the home address of the employee should not be disclosed to the process server.
- If an employee is expected back in a day or two, service of a subpoena can be accepted.
- If a subpoena is accepted in error, immediately contact the AAG assigned to your unit for guidance through your supervisory channels.

### Subpoenas Regarding DLEG Litigation

Prior to compliance with a subpoena that relates to pending DLEG-related litigation the Department of Attorney General should be contacted. **THE AGENCY SHOULD NOT TAKE ACTION** until it receives instructions from the Department of Attorney General.

- If unable to determine whether the subpoena is related to pending litigation, contact the AAG assigned to your Agency.
- If the subpoena requires disclosure of documents which the DLEG would normally object to providing in discovery, the Agency should clearly identify the documents under objection and inform the AAG assigned to the Agency.
- The person(s) designated to receive subpoenas should remember to make available a complete copy for the Department of Attorney General of exactly what is provided in response to the subpoena. The Agency/staff should make one copy before redactions and one copy after redactions.
- Supply the AAG a copy of all correspondence (not necessarily the documents provided as attachments/enclosures) related to the subpoena.
- Documents proposed to be disclosed should be provided and reviewed by the appropriate AAG before disclosure to the third party.

### Subpoenas Regarding Non-DLEG Litigation

If the subpoena is for a matter unrelated to DLEG litigation, e.g., a criminal matter, divorce case, child custody case, etc., the Agency/staff must review the subpoena carefully and try to determine the following:

#### Testimony In Court

- If the subpoena requires testimony in court, then the Agency/staff must ensure that the subpoena is complied with unless the Department of Attorney General is successful in obtaining a court order to quash the subpoena.
- The Agency/staff or AAG may contact the attorney who issued the subpoena to obtain clarification of what is being requested. (Always have the AAG contact legal counsel issuing the subpoena unless otherwise advised).
- If there are serious concerns as to the nature of the documents requested in the subpoena, the AAG assigned your unit should be contacted for guidance.

- The person(s) appearing in court with the documents on behalf of the Agency should advise the Judge of any privacy and confidentiality concerns in disclosing the documents.
- The person(s) appearing in court with the documents should remember to take both the original and certified copy of documents being requested. If there are objections to documents put those copies in a separate envelope marked “confidential.” Verbally raise concerns with the Judge as to reasons for confidentiality.
- The person(s) appearing in court with the documents should be familiar with documents being provided, the documents not being provided, and the reasons for not providing ordered documents.
- The person(s) appearing in court should immediately after the proceeding report to Agency management personnel what transpired. A copy of a transcript for the proceedings may become necessary, if the interests of the Agency or State of Michigan were implicated.

#### Providing Documents Outside of Court

- If the subpoena issued by an attorney requires that documents be provided to the attorney who issued the subpoena or to a copying service, then the Agency/staff must determine whether privacy and confidentiality are at issue prior to complying with the subpoena. Consideration should also be given to seeking Department of Attorney General advice about seeking a protective order or for the initiation of an action to quash the subpoena.
- If the documents requested are of a confidential nature (e.g. client psychological/medical report) and are regarding a person represented by the attorney who issued the subpoena, the documents should be provided with a cover memorandum identifying the specific documents that are confidential. Certain records cannot be released without an order signed by a judge.
- If the documents requested are of a confidential nature and are regarding a person not represented by an attorney making the request, then the Agency/staff should respond by stating “we object to providing the documents, unless a waiver for release of the specific documents is provided.”
- Agency management should determine whether the Department of Attorney General should be consulted or AAG representation requested. This is particularly when an employee may be questioned or asked to respond to questions posed by an attorney, e.g., interrogatories, deposition testimony, or during other formal proceedings.

## Confidential Records

IF A CONFIDENTIAL RECORD IS SUBPOENAED for presentation before a court, an explanation of the confidentiality imposed by law must be made to the court, prior to the court hearing if possible, and a request made that the court excuse the Agency.

If the Agency is not excused, the record must be produced in obedience to the court's order.

Consult with the assigned AAG and discuss concerns and procedure and manner in which the concerns are presented to the court. IF A WORKER IS SUBPOENAED TO TESTIFY or supply confidential information, the court must be reminded of the confidentiality imposed by law.

Testifying about confidential records is the same thing as providing copies – that is, both involve the release of protected personal information. Thus, the federal/state regulations may prevent the Agency/staff from testifying unless one of the exceptions specified in the regulations has been satisfied.

If the subpoena indicates that the Agency/staff are to appear at a deposition or a hearing, it is advised that the Agency/staff attend the deposition or hearing, whether or not there is a court order, written consent, or other disclosure authority.

1. At a hearing: If the Agency/staff do not have authority to release the information (e.g., written consent, a court order signed by a judge, etc., as specified in the federal regulations), explain this lack of authority to the judge or magistrate and indicate that the Agency/staff can only testify or provide the information if the federal/state regulations have been satisfied. Agency/staff may read the following statement to the judge or magistrate in such situations:

“The [insert Agency name] required by the [insert federal/state/regulation/statutes] and its implementing regulations to ensure that personal information about clients is kept strictly confidential. The court should refer to... [insert reference].”

This statement should provide a judge or magistrate with sufficient legal authority to justify the Agency's decision to maintain confidentiality until the provisions of federal/state law have been fully satisfied. Oftentimes, a judge or magistrate will instruct a person that if he or she doesn't consent to the release of information, their case may have to be dismissed. This will often persuade the person to give verbal consent to the judge or magistrate *on the record*. Because the consent is *on the record*, there is a permanent memorandum of the person's consent, which is sufficient to authorize the release of personal information.

2. At a deposition: If the Agency/staff does not have authority to disclose certain information (e.g., written consent, a court order, etc., as defined in the appropriate federal/state regulation/statute), explain that the Agency/staff will not be able to answer any questions, or provide any information about a client, until the requirements of the particular regulation or statute have been met.

If a *judge* tells the Agency/staff to answer a question which would result in the release of personal information for which the Agency/staff do not have prior legal authorization to release, the Agency/staff should follow the judge's instructions and answer the questions *as if they had obtained the client's consent prior to the hearing*.

In the unlikely event that a *judge* instructs the Agency/staff to release the Agency's personal information which the Agency/staff would not release even to the client/person, it is advised that the Agency/staff explain the Agency's reluctance to the judge by citing to the appropriate reference(s) (e.g., requirements of the Veteran's Administration, Social Security Administration, etc. If the judge still insists that the Agency/staff provide the information, the Agency/staff should request to speak to the judge "off the record" and explain that the Agency/staff have been advised by the Michigan Attorney General to maintain confidentiality until the Agency/staff are able to secure the benefit of legal counsel in any situation where the Agency/staff are unsure. In this instance, a judge may threaten the Agency/staff with contempt, or may recess and allow you to contact the AAG. If the Agency/staff are threatened with contempt, the Agency/staff must then decide, based on all the circumstances, whether to safeguard client confidentiality, even if doing so could result in the imposition of sanctions, including fines and jail.

### Personnel Files

If the subpoena is for copies of employment records of either the plaintiff or the defendant, the Agency/staff should advise the Office of Human Resources to comply. The employee whose records have been subpoenaed are usually notified. This gives the employee additional notice to file his/her objection to the subpoena. (Most common examples of subpoenas for personnel files are wages, divorce, or child custody cases.)

Note that there are several circumstances where an Agency might object to complying with a subpoena for employment records, such as:

- When the records requested are those of an employee who is not named in the lawsuit and no authorization for release is provided.
- When release of any of the information would create a conflict with another privacy statute (e.g., HIPPA, CFR 361.38).



- When there is no signed authorization to release records with the subpoena, the requester is generally informed that due to confidentiality statutes/regulations, the Agency is withholding and/or redacting certain information/records, including:
  - Psychological or medical reports
  - All social security numbers
  - All personal phone numbers
  - All personal addresses
  - All birthdates/age information
  - All employee ID numbers (state/federal, etc.)
  - Family member names, addresses, phone numbers
  - Substance abuse assessments
  - Sex Offender registrations
  - LIENS
  - Any records whereby the disclosure would constitute a clear violation of an individual's privacy

Note: The following copies of redacted items to retain the above confidentiality may be released:

- Employment records/applications
- Earnings/payroll records, time cards/attendance sheets
- W-2 forms
- Correspondence
- Accident reports, less any medical/psychological information
- Workers Comp claims, less any medical/psychological information
- Insurance records, medical/psychological information

The AAG assigned to the Agency should be contacted whenever there is concern about compliance (i.e. do not refuse to comply without first contacting the AAG).

Subpoenas for Non-Documents, such as audio or video tapes. If such a subpoena is received, the Agency/staff should contact the AAG for guidance.

#### Video Tapes of Critical Incidents

The tapes must be reviewed carefully by the AAG and contact must be made with the appropriate Agency personnel to discuss the content of the tapes before they are provided.

### Processing Fee Checks<sup>10</sup>

A subpoena should include a processing fee (usually \$6.00 for forwarding documents and \$12.00 for personal appearances) attached. The check must be forwarded to the Agency, or:

State of Michigan  
Department of Labor & Economic Growth  
Office Services Mailroom  
7150 Harris Drive, P.O. Box 30015  
Lansing, MI 48909

If no processing fee check is attached and documents have been requested, calculate the total amount due for the documents and invoice per the Example 9, Subpoena Notice letter as shown in Attachment 8 (Example Response Letters) or a similar invoice document. (Note: Certain assessed costs may be contested on a case-by-case).

Note: Subpoenas issued by state agencies/courts may not include fee checks.

### Payment for Documents Requested by Subpoenas

Provide the documents with a cover letter explaining that the cost for providing them is calculated as indicated below and state the total amount due (the same as a FOIA invoice):

Effective October 1, 2007	
Service	Cost
Duplication Per Page	\$00.25
Hourly Labor (including benefits \$16.20 + \$6.80 General Office Assistant 5)	Per hour \$23.00
Hourly Labor (including benefits) Most capable employee	Varies
Postage	Actual
Per Ream of Paper Postage (ream = 500 pages)	\$6.38
Photo Discs (each)	\$15.00
Photo Sheets Per Page	\$1.00
Audio Tapes, Etc.	Actual
Other	Actual

Payments are to be made as indicated. When the payment is received, forward it to the DLEG Office Services Mailroom as indicated above.

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<sup>10</sup> The Revised Judicature Act (RJA). 1961 PA 236: MCL 600.2552 provides for the statutory fee amounts for a subpoenaed witness.

#### **14. DLEG Litigation Coordination**

The DLEG Executive Office designates a “Litigation Coordinator” to whom copies of all lawsuits against DLEG should be sent so that he/she can:

- Make sure DLEG actions are timely so that lawsuits are not simply lost due to in action.
- Keep the Executive Office aware of such proceedings.
- Coordinate the gathering of applicable information/records from impacted DLEG offices/bureaus needed for AG representation.
- Be responsible to ensure that “Requests for Representation” are timely made to the Office of Attorney General.
- Monitor the appropriate AG and/or Court actions until legal disputes against are resolved.

When it is determined that as a result of legal action against DLEG, representation by the Office of Attorney General is required, the DLEG Executive Director must process a “Request for Representation” (see sample). Note: Only the Office of Attorney General is authorized to represent the state regarding litigation against the state.

The current DLEG Litigation Coordinator is:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

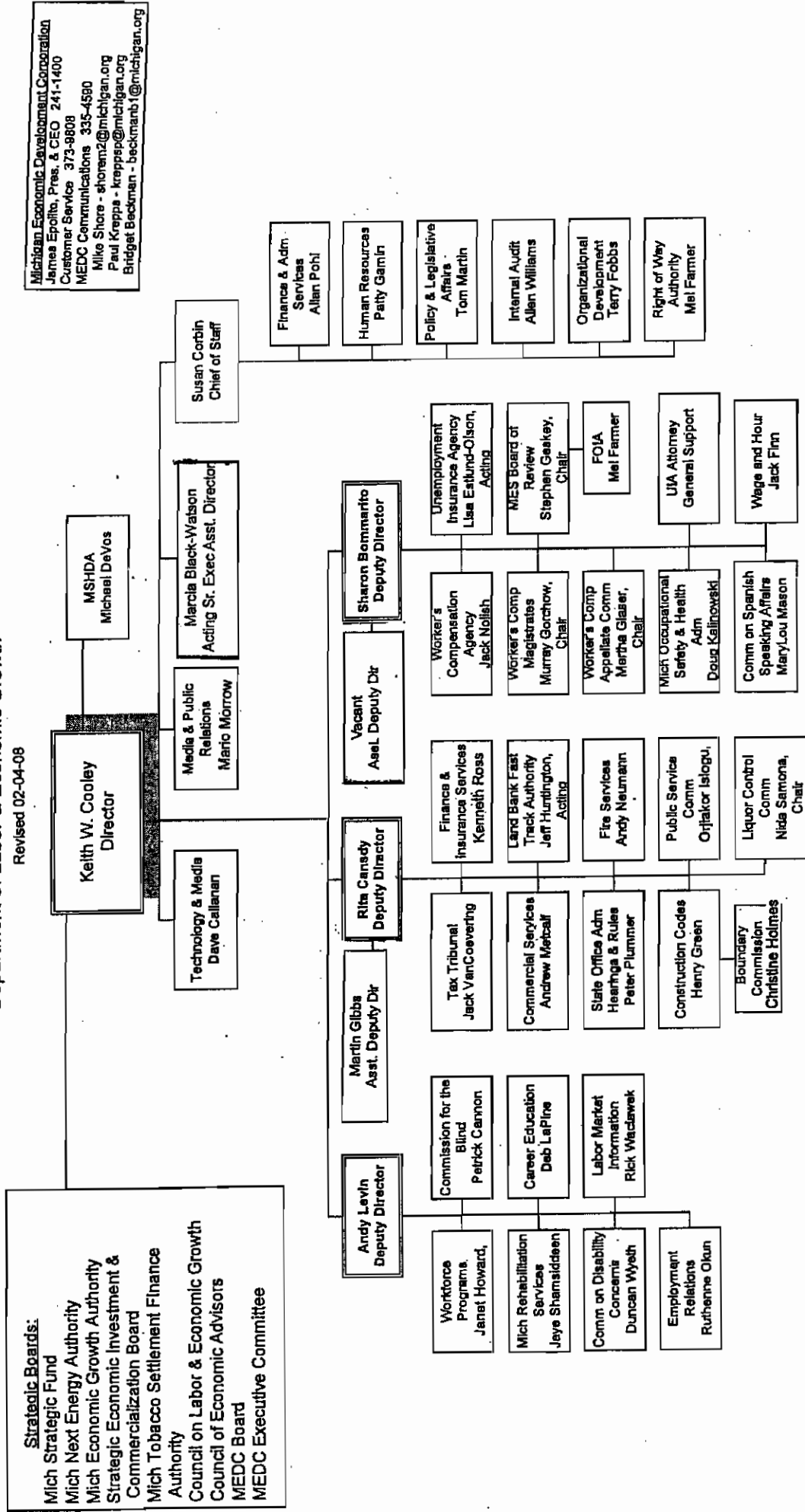
### **III. ATTACHMENTS**

- ATTACHMENT 1.** DLEG Organizational Chart
- ATTACHMENT 2.** DLEG Boards, Commissions, Authorities
- ATTACHMENT 3.** DLEG Bureau/Office FOIA Practices
- ATTACHMENT 4.** Media Requests Routing Cover Sheet
- ATTACHMENT 5.** Michigan Departments FOIA Coordinator
- ATTACHMENT 6.** Attorney General DLEG Assignments
- ATTACHMENT 7.** Subpoena Related Information
- ATTACHMENT 8.** Example Response Letters
- ATTACHMENT 9.** Records Management – Excerpts
- ATTACHMENT 10.** DLEG FOIA Coordinators
- ATTACHMENT 11.** DMB Procedure 2410.01 (FOIA)
- ATTACHMENT 12.** FY08 FOIA Cost Guidelines/Invoice Form

# ATTACHMENT 1

## DLEG Organizational Chart

Department of Labor & Economic Growth  
Revised 02-04-08



Michigan Economic Development Corporation  
 James Epifanio, Pres. & CEO 241-1400  
 Customer Service 373-9808  
 MEDC Communications 335-4580  
 Mike Store - storem2@michigan.org  
 Paul Krepps - krepps2@michigan.org  
 Bridget Beckman - beckmanb1@michigan.org

## **ATTACHMENT 2**

### **DLEG Boards, Commissions, Authorities**

## ATTACHMENT 2. DLEG Boards, Commissions, Authorities



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

KEITH W. COOLEY  
DIRECTOR

### DLEG Boards, Commissions, Authorities

#### Subject to Michigan Open Meetings Act and/or Freedom of Information Act

(NOTE: Some of the following may be subject to one or both, the OMA and/or FOIA)

#### Boundary Commission

##### Bureau of Construction Codes

- State Construction Code Commission
- Barrier Free Design Board
- Michigan Board of Boiler Rules
- Electrical Administrative Board
- Elevator Safety Board
- Manufactured Housing Commission
- Board of Mechanical Rules
- State Plumbing Board

##### Commission on Disability Concerns

- Division on Deaf and Hard of Hearing Advisory Council

##### Bureau of Employment Relations (BER)

- Michigan Employment Relations Commission (MERC)

##### Bureau of Fire Services

- Michigan Fire Fighters Training Council
- State Fire Safety Board

##### Commercial Services

- Licensing Division
- Board of Accounting
- Board of Architects
- Athletic Board of Control
- Board of Barber Examiners
- Residential Builders and Maintenance and Alteration Contractors
- Carnival-Amusement Safety Board
- Cemetery Regulation
- Collection Practices Board
- Board of Professional Community Planners
- Board of Cosmetology
- Board of Professional Engineers
- Board of Foresters
- Board of Hearing Aid Dealers
- Board of Landscape Architects
- Board of Examiners in Mortuary Science
- Personnel Agency Board
- Board of Forensic Polygraph Examiners
- Board of Real Estate Appraisers

06/25/2007



- Board of Real Estate
- Ski Area Safety Board
- Board of Professional Surveyors

Commission for the Blind

Commission on Spanish Speaking Affairs (COSSA)

Land Bank Fast Track Authority

Liquor Control Commission

METRO Authority

Michigan Employment Security Board of Review

Michigan Occupational Safety & Health Administration (MIOSHA)

- General Industry Safety Standards Commission
- Construction Safety Standards Commission
- Occupational Health Standards Commission
- Board of Health and Safety Compliance and Appeals

Michigan Public Service Commission

Michigan Rehabilitation Services (MRS)

- Michigan Rehab Council (MRC)
- Statewide Independent Living Councils (SILC)

Michigan State Housing Development Authority

Michigan Tax Tribunal

Office of Financial and Insurance Services (OFIS)

State Office of Administrative Hearings and Rules (SOAHR)

Utility Consumer Participation Board

Workers' Compensation Appellate Commission (WCAC)

Workers' Compensation Board of Magistrates

Workers' Compensation Qualifications Advisory Committee (QAC)

Workforce Programs

- Council for Labor & Economic Growth (CLEG)

## **ATTACHMENT 3**

### **DLEG Bureau/Office FOIA Practices**

DLEG BUREAU/OFFICE FOIA PRACTICES

**ATTACHMENT 3. DLEG Bureau/Office FOIA Practices**

<b>BUREAU/OFFICE</b>	<b>(1)=NON-FOIA CONFIDENTIALITY REQUIREMENTS (2)=SUBPOENAS (3)=SENSITIVE ISSUES</b>
<b>Adult Education</b>	1= Federal Family Educational Rights Act (FERPA) exempts certain student related information 2= Subpoenas for records not signed by a judge treated as FOIA requests. 3= Agency director makes determination/referrals regarding sensitive issues.
<b>Commercial Services</b>	1= No unique statutory provisions. 2= Bureau generally complies with subpoena requester whether signed by a judge/attorney/magistrate. 3= Possible sensitive issues screened within divisions/Compliance, Legal, and FOIA Section for bureau director determination; bureau director may consult directly with DLEG Executive Office.
<b>Commission for the Blind</b>	1= Vocational Rehabilitation Policy Manual; Public Act 56, Section 18 (substance abuse); Social Security Administration; Section 85 of P.A. 314 of 1915 prescribe confidentiality requirements for clients. 2= Follow the MFIA guidelines regarding subpoenas which indicates that a subpoena signed by an attorney of record in the action or stamped by the clerk of the court in which the matter is pending has the force and effect of an order by the judge of that court. 3= Referred to agency director to determine action.
<b>Construction Codes</b>	1= BCCFS does not have any additional exempt items. 2= Processes and sends out information regardless of signatory; does not log-in as a FOIA request; does not charge additional fees other than sent with subpoena. 3= Bureau Director or Deputy make determination and email Media/Public Relations.
<b>Disability Concerns</b>	1= DC does not have any unique confidentiality exemptions. 2= Contacts Central FOIA Coordinator to process. 3= Bureau Director makes determination and contacts DLEG Director's Office.
<b>Employment Relations</b>	1= BER does not have any unique confidentiality exemptions. 2= Records are released in accordance with FOIA mandates and exemptions 3= FOIA Coordinator reviews/refers to bureau director who then contacts DLEG Executive Office.
<b>Commission on Spanish Speaking Affairs</b>	1= No unique federal/state laws/regulations. 2= Subpoenas for records not signed by a judge treated as FOIA requests. 3= Agency director makes determination/referrals regarding sensitive issues.
<b>Financial &amp; Insurance Services</b>	1= Michigan Banking Code (PA 3190 of 1969); Attorney General Opinion No. 5500; MCL 500.1246, Section 1246. 2= Typically release records, except where the Insurance code specifies otherwise; Financial Institution/Securities records, negotiate narrow release with written arguments regarding confidentiality. 3= Follows department guidelines.
<b>State Office of Administrative Hearings &amp; Rules</b>	1= No unique federal/state laws/regulations. 2= Releases non-exempt information regarding subpoenas signed by an attorney or magistrate. 3= FOIA Coordinator reviews/refers to bureau director who then contacts DLEG Executive Office.

<b>BUREAU/OFFICE</b>	<b>(1)=NON-FOIA CONFIDENTIALITY REQUIREMENTS</b> <b>(2)=SUBPOENAS</b> <b>(3)=SENSITIVE ISSUES</b>
<b>Human Resources</b>	1= States only FOIA (Employee Right-to-Know??) 2= Requires a Release Form signed by an employee to release personnel records under subpoena. 3= OHR director makes determination. Typically sends copies of FOIA requests to Media/Public Relations unit.
<b>Liquor Control Commission</b> (Type 1 autonomous agency)	1= No special exemptions reported. 2= A court approved or court signed subpoena would be honored. If not approved or signed by a court, MLCC would employ the exceptions in the FOIA. 3= When a sensitive issue is identified, the Chairperson, appointed by the Governor, would notify the Executive Office.
<b>MES Board of Review</b>	1= MCL 421.36(3). 2= Most records subject to disclosure via MCL 421.36(3); generally comply with subpoena. 3= Board claim or direct would make determination and communicated to DLEG Media/Public Relations unit.
<b>METRO Authority</b>	1= PA48 of 2002, Section 6(5) regarding provider route maps. 2= Subpoenas for records not signed by a judge treated as FOIA requests. 3= Agency director makes determination/referrals regarding sensitive issues.
<b>Michigan Rehabilitation Services</b>	1= The Rehabilitation Act of 1973, 29 USC 720 <i>et seq</i> , and in particular, implementing regulations at 34 CFR 361.38, prohibits DLEG/MRS from releasing vocational rehabilitation client records except in narrowly defined circumstances. Under 34 CFR 361.38, medical, psychological or other client information that DLEG/MRS determines may be harmful to the client, may not be released to any person, including the client, unless: <ul style="list-style-type: none"> <li>- Pursuant to a signed and dated court order (i.e., not a subpoena signed by a lawyer); or</li> <li>- After the client has designated, in writing, a qualified third person to receive and interpret the information for the client. <i>DLEG/MRS determines whether the third person is qualified to receive/interpret the information</i></li> <li>- After the client has designated, in writing, a qualified third person to receive and interpret the information for the client. <i>DLEG/MRS determines whether the third person is qualified to receive/interpret the information.</i></li> </ul> 2= Subpoena for records not signed by a judge treated as FOIA requests. 3= Agency Director via staff recommendations makes determination/referral.
<b>MIOSHA</b>	1= Michigan Occupational Safety and Health Act (Act 154 of 1974 as amended), Section 631; Title 29, CFR, Part 1908; Federal Copyright Act, Sec. 17 U.S.C; and Workers Disability Compensation (P.A. 317 of 1969, as amended P.A. 109 of 1989), Section 230(1). 2= Responds to attorney issued and/or judge signed 3 <sup>rd</sup> party litigation subpoenas as follows per 8-27-02 email from Deborah Grether regarding: <ul style="list-style-type: none"> <li>- Closed MIOSHA citation files release except trade secrete info</li> <li>- Open MIOSHA to prevent requesting lawyer from releasing to others.</li> </ul> 3= FOIA representative routes request through appropriate staff, including Media/Public Relations unit.

<b>BUREAU/OFFICE</b>	<p>(1)=NON-FOIA CONFIDENTIALITY REQUIREMENTS  (2)=SUBPOENAS  (3)=SENSITIVE ISSUES</p>
<p><b>Michigan State Housing Development Authority</b>  (Type 1 autonomous agency)</p>	<p>1=MCLA 205.28(1)(f)—Disclosure of Tax Records. When requests for tax records are made, the Authority withholds tax records and cite MCLA 205.28(1)(f) and MCLA 15.243(1)(a) (exemption for privacy). (MCLA 205.28(1)(f) is cited based on the advice of Mr. Quasarano.)</p> <ul style="list-style-type: none"> <li>- MCLA 423.506—The Authority will give notice to employees of requests for records of disciplinary action against them.</li> <li>- MCLA 423.507—The Authority will not release records of disciplinary action that are more than 4 years old.</li> </ul> <p>2= Subpoenas are forwarded to one of six Legal Affairs staff persons, all of whom are members of the State Bar of Michigan. The staff person will review the subpoena and handle the response, including the collection and delivery of copies of requested document, if applicable. The staff person will consult with the Office of Attorney General when a particular response to a subpoena involves a careful judgment call.</p> <p>3= The Authority's Executive Director in consultation with the Authority's Directors of Program Policy &amp; Market Research and/or Legal Affairs, makes determination of a sensitive issue. The Executive Director notifies Dennis Sykes, DLEG Deputy Director, and the Authority's Communications Officer notifies DLEG Media and Public Relations. Upon receipt of requests from the media or Legislature, the Authority's FOIA Coordinator notifies Authority's Directors of DLEG Program Policy &amp; Market Research and Legal Affairs and the DLEG Central FOIA Coordinator.</p>
<p><b>Postsecondary Services</b></p>	<p>1= Federal Family Educational Rights Act (FERPA).  2= Subpoenas for records not signed by a judge treated as FOIA requests.  3= Agency director makes determination/referrals regarding sensitive issues.</p>
<p><b>Unemployment Insurance Agency</b></p>	<p>1= Michigan Employment Security Act (421.11) Administrative Rules, and two policy statements related to confidentiality/disclosure of records.  2= Processes subpoena requests upon receipt of payment of fees.  3= After review by senior lead staff and UIA Assistant A.G., possible sensitive issue relayed to agency director to determine the alerting of DLEG Executive Office.</p>
<p><b>WC Appellate Commission</b></p>	<p>1= No special exemptions reported.  2= Records are not released under subpoena signed by an attorney. An attorney would need to request copies of the record under FOIA and pay for the fees incurred. Magistrates may request copies without subpoena, and they will forward onto him/her without charge.  3= William G. Reamon, Jr. makes determination of sensitive issues and notifies DLEG Director's Office or Media/Public Relations unit.</p>
<p><b>Workers Compensation Agency</b></p>	<p>1= Workers Disability Compensation Act (Section 230) as amended by Act 109 of 1998.  2= Processes the same as a FOIA request, excepting</p> <ul style="list-style-type: none"> <li>- A subpoena signed by a magistrate not subject to exclusions cited in Section 230 of WDC Act</li> <li>- Per Section 230(7) of the WDC Act, court of law issued subpoenas for records regarding a matter pending before said court are not subject to the exclusions cited in Section 230 of WDC Act</li> </ul> <p>3= Follow guidelines issued August 28/September 10, 1998. Usually FOIA Coordinator determines what is sensitive, refers to agency director who forwards to DLEG director's office and Media/Public Relations unit.</p>
<p><b>Workforce Development</b></p>	<p>1= None reported. (Workforce Development Policy 1.0200 and Guidelines Manual (Item 2.0175).  2= Subpoenas for records not signed by a judge treated as FOIA requests.  3= Agency director makes determination/referrals regarding sensitive issues.</p>

## **ATTACHMENT 4**

### **Media Requests Routing Cover Sheet**

ATTACHMENT 4. Media Requests Routing Cover Sheet

MTS # \_\_\_\_\_

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH

**ROUTING COVER SHEET**

DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

TO:

- ☐ Mario Morrow, FAX # (517) 241-1580
- ☐ FOIA OFFICE, FAX # (517) 335-4037

FROM: \_\_\_\_\_  
(Name) (Bureau/Office) (Tel.#)

RE: **Freedom of Information Act Request**

Attached is a request from \_\_\_\_\_  
(name)

of \_\_\_\_\_  
(firm/organization/connection, if known)

The requestor is a representative of or connected with the:

- ☐ media
- ☐ union or union representative
- ☐ political organization
- ☐ hot issue (Please specify) \_\_\_\_\_
- ☐ form letter
- ☐ request pertains to memos from the Executive Office.

Our information about this request or requestor is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The request was received on \_\_\_\_/\_\_\_\_/\_\_\_\_ date by:

- ☐ mail
- ☐ fax
- ☐ hand-delivery
- ☐ e-mail
- ☐ I.D. mail from another agency.

If this request pertains to an open regulatory matter, the upcoming date is \_\_\_\_/\_\_\_\_/\_\_\_\_ for an:

- ☐ informal settlement conference
- ☐ prehearing conference
- ☐ administrative hearing
- ☐ court date
- ☐ other (Please specify) \_\_\_\_\_

The **five-business day deadline** for this request is \_\_\_\_/\_\_\_\_/\_\_\_\_.

- ☐ Please check if an extension letter has already been issued.

The **ten-business day extension deadline** for this request is \_\_\_\_/\_\_\_\_/\_\_\_\_.

## **ATTACHMENT 5**

**Michigan Departments FOIA Coordinators**



**Michigan Departments FOIA Coordinators**

Department Agency	Contact	Phone	Fax
Agriculture	Brad Deacon	241-4085	335-1423
Attorney General	Christine Dingee	373-1162	241-3097
Auditor General	Paul Green	334-8050	334-8079
Civil Rights	Candace Chivis	(313) 456-3819	(313) 456-3721
Civil Service	Diane Earls	373-1849	373-3103
Community Health	Mary Greco	373-3772	335-8297
Corrections	Sergio Cacciani	335-1397	373-2558
Education	Eileen Hamilton	373-3902	335-4575
Environmental Quality	Susan Vorce	241-8166	241-7428
Human Services	Lutrel Livingston	373-2082	241-7340
History, Arts & Libraries	Nick Bozen	241-3989	241-2930
Information Technology	Kurt Weiss	335-0050	241-2004
Labor & /Economic Growth	Mel Farmer	373-0194	335-4037
Management & Budget	Gary Buckberry	335-1537	335-1521
MI Economic Dev Corp	Claire McKenna	373-3581	241-5968
Military & Veterans Affairs	Joel Wortley	483-5654	483-5568
Natural Resources	Douglas Finley	335-3433	335-4242
State	Melissa Maleman	335-5456	373-2999
State Police	Lori Hinkley	322-5044	322-5350
Transportation	Bill Perod	373-2297	241-1448
Treasury	Carla Robert	373-3223	335-1785

## **ATTACHMENT 6**

### **Attorney General DLEG Assignments**

# **DLEG**

August 8, 2007

## **Attorney General Division Assignments**

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### **ALCOHOL AND GAMBLING ENFORCEMENT - ALCOHOL ENFORCEMENT**

Secondary Complex  
7150 Harris Drive  
P.O. Box 30005  
Lansing, MI 48909  
(517) 322-1367  
Facsimile (517) 322-6511

Section Head

Gerald A. Whalen

Assistants

Felepe H. Hall

Assignments

---

### **ALCOHOL AND GAMBLING ENFORCEMENT-ALCOHOL ENFORCEMENT**

Cadillac Place, 10th Floor  
3030 W. Grand Blvd., Suite 10-200  
Detroit, MI 48202  
(517) 241-1074  
Facsimile (517) 241-1074

Assistants

Melinda A. Leonard

### **ALCOHOL AND GAMBLING ENFORCEMENT - ALCOHOL ENFORCEMENT**

Liquor Control Commission  
24155 Drake Road  
Farmington, MI 48335-3168  
(248) 888-8800  
Facsimile (248) 888-8808

First Assistant

Howard E. Goldberg

Assistants

Rosendo Asevedo, Jr.  
Darnelle Dickerson  
Linda Pytel McDowell

Assignments

Liquor Control Commission

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**CONSUMER & ENVIRONMENTAL PROSECUTION BUREAU**

**G. Mennen Williams Building, 6th Floor  
525 W. Ottawa Street  
P.O. Box 30755  
Lansing, MI 48909  
(517) 335-3571  
Facsimile (517) 335-6954**

**Bureau Chief**

**A. Michael Leffler**

**Senior Executive Management Assistant**

**Diane E. VanderMoere**

**Assignments**

**Alcohol & Gambling Enforcement Division  
Consumer Protection Division**

---

**ECONOMIC DEVELOPMENT & OVERSIGHT BUREAU**

**G. Mennen Williams Building, 2nd Floor  
525 W. Ottawa Street  
P.O. Box 30754  
Lansing, MI 48909  
(517) 335-3645  
Facsimile (517) 335-3696**

**Bureau Chief**

**Deborah Anne Devine**

**Senior Executive Management Assistant**

**Cynthia L. Armstrong**

**Assignments**

**Finance Division  
Insurance & Banking Division  
Public Service Division  
Revenue & Collections Division  
Revenue & Collections Division  
State Operations Division**

---

**CONSUMER PROTECTION**

**G. Mennen Williams Building, 6th Floor**

**525 W. Ottawa Street**

**P.O. Box 30213**

**Lansing, MI 48909**

**(517) 335-0855**

**(517) 373-1140 Complaints - Fax (517) 241-3771**

**(517) 373-7117 Antitrust & Franchise, P.O.BOX 30213**

**(517) 373-1152 Charitable Trusts, P.O. Box 30214 - Fax (517) 241-0229**

**Facsimile (517) 335-1935**

**Division Chief**

**Katharyn A. Barron**

**First Assistant**

**Suzan M. Sanford**

**Assistants**

**Kathy P. Fitzgerald**

**Suzanne Hassan**

**Dee J. Pascoe**

**Nancy A. Piggush**

**Suzanne D. Sonneborn**

**Tracy A. Sonneborn**

**Assignments**

**Charitable Trust**

Charitable solicitation licenses

Charitable trust registration

Dissolution of charities

Oversight of testamentary charitable trusts of estates with charitable remainders

Licensing and registration of professional fundraisers

Registration of public safety organizations

**Consumer Protection**

Consumer complaints (including scams)

False advertising

Home improvement finances

Home solicitation sales

Identity theft

Information security and privacy

Item pricing/scanning errors

Landlord/tenant relations

Living Trusts

New and used auto sales and leases

Retail installment sales

Selling and advertising

Telemarketing (Do Not Call)

Sweepstakes

Telecommunications (deregulated)

Warranties

Tobacco Litigation

Franchise

- Franchise registrations
- Business opportunity registrations
- Pyramid schemes

Antitrust

- Restraint of trade
- Price fixing
- Civil securities fraud
- Monopoly and merger enforcement under state and federal

antitrust

law

- Directs and conducts litigation and investigations by specific assignment from the Attorney General
- Utility rate and service proceedings (electricity, natural gas, telecommunications)
- Tobacco litigation
- Special assignments such as sweepstakes

---

**PUBLIC EMPLOYMENT, ELECTIONS, AND TORT**

State Office Building, Suite 4C  
350 Ottawa NW  
Grand Rapids, MI 49503  
(616) 356-0402

Assistants

Mark E. Donnelly

Assignments

Public Employment, Elections

- All election campaign finance-related matters
- All employment discrimination matters for state agencies,

Tort Defense

- Defense of tort suits against state officers and employees and all state departments except Corrections. Also represent

---

**INSURANCE & BANKING**

**G. Mennen Williams Building, 2nd Floor**

**525 W. Ottawa Street**

**P.O. Box 30754**

**Lansing, MI 48909**

**(517) 373-1160**

**Facsimile (517) 335-6755**

**Division Chief**

**E. John Blanchard**

**Assistants**

**William A. Chenoweth**

**Jessica Danou**

**Michael P. Farrell**

**Christopher L. Kerr**

**David W. Silver**

**Assignments**

**Department of Labor and Economic Growth**

**Office of Financial and Insurance Services**

**Insurance-Banking-Securities**

**Insurance Code of 1956**

**Blue Cross Blue Shield of Michigan**

**Insurance Companies**

**Insurance Agents and Corporate Insurance Agencies**

**Health Maintenance Organizations**

**Supervision, Seizure, Rehabilitation, and Liquidation of  
Insurance Companies and HMOs**

**Patient's Right to Independent Review Act**

**Essential Insurance (automobile and home insurance)**

**No-Fault Automobile Insurance**

**Approval of Articles of Incorporation and Amendments to  
Articles**

**Multiple Employer Welfare Arrangements (MEWAs)**

**Banking Code of 1999**

**Credit Reform Act**

**Credit Union Act**

**Regulatory Loan Act**

**Sale of Checks Act**

**Savings Bank Act**

**Mortgage Brokers, Lenders & Servicers Licensing Act**

**Second Mortgage Act**

**Consumer Financial Services Act**

**Uniform Securities Act**

**Bureau of Commercial Services**

**Corporation Division**

**Business Corporation Act**

**General Corporation Act**

**Limited Liability Company Act**

**Nonprofit Corporation Act**

**Partnership Associations**

**Professional Service Corporation Act**

**Revised Uniform Limited Partnership Act**

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**FINANCE**

**G. Mennen Williams Building, 2nd Floor  
525 W. Ottawa Street  
P.O. Box 30754  
Lansing, MI 48909  
(517) 373-1130  
Facsimile (517) 335-3088**

**Division Chief**

**Terrence P. Grady**

**First Assistant**

**Patricia T. Quinn**

**Section Heads**

**Timothy F. Konieczny**

**Assistants**

**Robert L. Brackenbury  
Ronald H. Farnum  
Lisa C. Hagan  
Molly M. Jason  
Alan J. Lambert  
William F. Pettit  
Jarrod Travis Smith**

**Assignments**

**Department of Labor & Economic Growth  
Michigan Broadband Development Authority  
Michigan State Housing Development Authority  
Michigan Strategic Fund  
Michigan Low-Level Radioactive Waste Authority  
Michigan Land Bank Fast Track Authority**



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**LABOR DIVISION - WORKERS' COMPENSATION UNIT**

Cadillac Place, 10th Floor  
3030 W. Grand Blvd. Suite 10-150  
Detroit, MI 48202  
(313) 456-0080  
Facsimile (313) 456-0081

Division Chief

Ray W. Cardew, Jr.

Assistants

William F. Denner  
Brian S. Galin  
Morrison R. Zack

**LABOR DIVISION - WORKERS' COMPENSATION UNIT**

G. Mennen Williams Building, 5th Floor  
525 W. Ottawa Street  
P.O. Box 30736  
Lansing, MI 48909  
(517) 373-1176  
Facsimile (517) 335-4879

Section Head

Rose A. Houk

Assistants

Phillip I. Frame  
Charles L. Jones  
Jessica E. LePine  
Dennis J. Raterink

Assignments

Michigan Department of Labor & Economic Growth  
Bankruptcies of self-insured employers  
Board of Funds Trustees  
Workers' Compensation Agency  
Enforce compliance of employers securing of worker's  
compensation coverage  
Medical Benefits Fund  
Qualifications Advisory Board  
Second Injury Fund  
Self-Insurers' Security Fund  
Silicosis, Dust Disease, and Logging Industry Compensation  
Fund  
Workers' Compensation Appellate Commission  
Workers' Compensation Board of Magistrates

---

**LABOR - LABOR UNIT**

**G. Mennen Williams Building, 5th Floor  
525 W. Ottawa Street  
P.O. Box 30736  
Lansing, MI 48909  
(517) 373-2560  
Facsimile (517) 335-4879**

**First Assistant**

**Richard P. Gartner**

**Section Head**

**Susan Przekop-Shaw**

**Assistants**

**Timothy T. Gardner, Jr.  
Thomas Dale Warren**

**Assignments**

**Michigan Department of Labor & Economic Growth:**  
Agricultural Labor Commission  
Bankruptcies of self-insured employers  
Board of Funds Trustees  
Board of Health & Safety Compliance & Appeals  
Boiler Board  
Bureau of Construction Codes  
Bureau of Employment Relations  
Bureau of Safety & Regulation (MIOSHA and Wage/Hour)  
Bureau of Workers' & Unemployment Compensation  
Commission for the Blind  
Commission on Handicapper Concerns  
Construction Code Commission  
Electrical Administrative Board  
Elevator Board  
Employment Relations Commission  
Enforce compliance of employers securing of workers'  
    compensation coverage  
Medical Benefits Fund  
Mine Safety Board  
Occupational Safety Standards  
Plumbing Board  
Qualifications Advisory Board  
Second Injury Fund  
Self-Insurers' Security Fund  
Silicosis, Dust Disease, and Logging Industry Compensation  
**Fund**  
State Fire Safety Board  
Wage Deviation  
  
Workers' Compensation Appellate Commission  
Workers' Compensation Board of Magistrates  
Unemployment Insurance Agency  
    Bureau of Workers' & Unemployment Compensation Michigan  
    Employment Security Board of Review  
Workers Compensation Agency

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**LABOR DIVISION - UNEMPLOYMENT UNIT**

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Detroit, MI 48202  
(313) 456-2200  
Facsimile (313) 456-2201**

**First Assistant**

**Donna K. Welch**

**Assistants**

**Errol R. Dargin  
Mark F. Davidson  
Jon M. DeHorn  
Roland Hwang  
Peter T. Kotula  
Martin J. Vittands  
Shannon N. Wood**

**Paralegal**

**Lindsay D. Burr  
Jessica A. Puumala**

**LABOR DIVISION - UNEMPLOYMENT UNIT**

**Grand Rapids  
350 Ottawa, N.W., Suite 4-C  
Grand Rapids, MI 49503  
(616) 356-0400  
Facsimile (616) 356-0411**

**Assistants**

**Julie M. Jensen  
Thomas C. Johnson**

**Assignments**

**Michigan Department of Labor & Economic Growth  
Unemployment Insurance Agency  
Michigan Employment Security Board of Review**

---

**LICENSING & REGULATION**

**Cadillac Place, 10th Floor  
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Detroit, MI 48202  
(313) 456-0040  
Facsimile (313) 456-0041**

**Section Head**

Thomas P. Scallen

**Assistants**

Jack A. Blumenkopf  
Michael G. Frezza  
Katherine Kakish  
Michael A. Lockman  
Kelley T. McLean  
Virginia H. Trzaskoma

**Assignments**

Department of Labor & Economic Growth  
Bureau of Construction Codes  
Manufactured Housing Commission  
Bureau of Commercial Services  
Athletic Board of Control  
Alarm System Contractors  
Board of Accountancy  
Board of Architects  
Board of Barber Examiners  
Board of Cosmetology  
Board of Forensic Polygraph Examiners  
Board of Professional Surveyors  
Board of Landscape Architects  
Board of Mortuary Science  
Board of Professional Community Planners  
Board of Professional Engineers  
Board of Real Estate Brokers and Salespersons  
Board of Residential Builders & Maintenance & Alteration  
Contractors  
Carnival-Amusement Safety Board  
Collection Agencies  
Interior Designers  
Personnel Agency Board  
Private Detectives  
Private Security Guards  
Ski Area Safety Board  
Cemetery Commission  
Crematories  
Foresters  
Hearing Aid Dealers and Salespersons  
Homeowner Construction Lien Recovery Fund  
Prepaid Funeral Contracts

---

**LICENSING & REGULATION**

**G. Mennen Williams Building, 2nd Floor  
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Lansing, MI 48909  
(517) 373-1146  
Facsimile (517) 241-1997**

**Division Chief**

**Howard C. Marderosian**

**First Assistant**

**Merry A. Rosenberg**

**Assistants**

**Susan K. Balkema**

**Todd H. Cohan**

**Jennifer Fitzgerald**

**Paul W. Jones**

**Amy L. Rosenberg**

**Michele M. Wagner-Gutkowski**

---

**OPINIONS AND MUNICIPAL AFFAIRS**

**G. Mennen Williams Building, 7th Floor  
525 W. Ottawa Street  
P.O. Box 30212  
Lansing, MI 48909  
(517) 373-6889  
Facsimile (517) 241-9982**

Division Chief

Susan I. Leffler

First Assistant

George M. Elworth

Assistant

Thomas Quasarano

Departmental Analyst

Christine S. Dingee

Assignments

Issuing Attorney General Opinions  
Performing special assignments for the Attorney General  
Auditor General  
Freedom of Information Act  
Open Meetings Act  
Children's Ombudsman  
Attorney General designee on the Boards of State Employees'  
Retirement System, Judges' Retirement System, Michigan State Police  
Retirement System  
Special Counsel to the Attorney General on Public Finance  
Department of Treasury, Local Audit & Finance Division  
Local Emergency Financial Assistance Loan Board  
City and village charters and charter amendments  
Intergovernmental agreements  
Municipal affairs, including counties, cities, villages, townships,  
districts, authorities, and other local organizations  
Infrastructure  
Local elections  
Local public offices  
Municipal contracts  
Municipal finance  
Municipal powers  
Municipal utilities  
Planning and developing  
Revenue sharing  
Zoning  
State Boundary Commission  
Annexation  
Incorporation  
Municipal boundary adjustment

August 8, 2007

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**STATE OPERATIONS**

**G. Mennen Williams Building, 2nd Floor  
525 W. Ottawa Street  
P.O. Box 30754  
Lansing, MI 48909  
(517) 373-1162  
Facsimile (517) 373-2060**

**Division Chief**

**Thomas F. Schimpf**

**First Assistant**

**Socorro Guerrero**

**Section Head**

**Larry F. Brya  
Michael J. Reilly**

**Assistants**

**Suzanne R. Dillman  
Patrick M. Fitzgerald  
Kevin L. Francart  
Daphne M. Johnson  
Matthew C. Keck  
Iris M. Lopez  
Mary Kathleen Markman  
Michael F. Murphy  
Sante J. Perrelli  
C. Adam Purnell  
Matthew H. Rick  
Stephen M. Rideout  
Daniel E. Sonneveldt  
John F. Szczubelek**

**Assignments**

**Department of Labor & Economic Growth  
Adult Education  
Michigan Rehabilitation Services  
Office of Workforce Development  
Michigan Strategic Fund  
Land Bank Fast Track Authority  
Community Development Block Grant Program  
Michigan Economic Growth Authority  
Michigan NextEnergy Authority  
Renaissance Zone Program  
Michigan State Housing Development Authority Litigation**

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**PUBLIC SERVICE**  
**6545 Mercantile Way, Suite 15**  
**Lansing, MI 48911**  
**(517) 241-6680**  
**Facsimile (517) 241-6678**

**Division Chief**

David A. Voges

**First Assistant**

Steven D. Hughey

**Section Head**

Michael A. Nickerson

**Assistants**

Patricia S. Barone

Angie A. Fadly

Vincent J. Leone

Emmanuel B. Odunlami

Michael J. Orris

Kristin M. Smith

**Assignments**

Public Service Commission

Federal energy and communications regulatory matters

Motor carriers

Public utilities

Emergency Telephone Service Enabling Act

Protect MI Child Registry

**TOBACCO AND SPECIAL LITIGATION**

**G. Mennen Williams Building, 7th Floor**

**525 W. Ottawa St.**

**P.O. Box 30755**

**Lansing, MI 48909**

**(517) 373-1123**

**Facsimile (517) 373-9860**

**Division Chief**

Robert Ianni

**Assistants**

Brian D. Devlin

Donald E. Erickson

Charles D. Hackney

John R. Liskey

Michael E. Moody

**Assignments**

Directs and conducts litigation and investigations by specific assignment from the Attorney General

Utility rate and service proceedings (electricity, natural gas, telecommunications)

Tobacco Litigation



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**REVENUE & COLLECTIONS**

**G. Mennen Williams Building, 2nd Floor  
525 W. Ottawa Street  
P.O. Box 30754  
Lansing, MI 48909  
(517) 373-3203  
Facsimile (517) 335-4880**

**Division Chief**

**Russell E. Prins**

**First Assistant**

**Ross H. Bishop**

**Assistants**

**Michael R. Bell  
Heather M. Durian  
Steven B. Flancher  
Timothy J. Haynes  
Bruce C. Johnson  
Heidi L. Johnson-Mehney  
Mark A. Meyer  
Bradley K. Morton  
Amy M. Patterson  
Kevin T. Smith**

**REVENUE & COLLECTIONS**

**Cadillac Place, 10th Floor  
3030 W. Grand Blvd., Suite 10-450  
Detroit, MI 48202  
(313) 456-0140  
Facsimile (313) 456-0141**

**First Assistant**

**Peggy A. Housner**

**Section Head**

**Margaret Bartindale**

**Assistants**

**Suann D. Cochran  
Julius O. Curling  
Kathleen A. Gardiner  
Juandisha M. Harris  
Victoria A. Reardon**

**Paralegal**

**Dana L. Bonaudo**

**Assignments**

**Department of Licensing and Economic Growth  
State Survey & Remonumentation Program**

# ATTACHMENT 7

## Subpoena Related Information

**The following excerpts from MCR 2.305, 2.306, and 2.310 (particularly where highlighted) address the matter of subpoenas for records served on parties and nonparties, and the charging of fees:**

**Rule 2.305 Subpoena for Taking Deposition**

**(A) General Provisions.**

(1) After serving the notice provided for in MCR 2.303(A)(2), 2.306(B), or 2.307(A)(2), a party may have a subpoena issued in the manner provided by MCR 2.506 for the person named or described in the notice. Service on a party or a party's attorney of notice of the taking of the deposition of a party, or of a director, trustee, officer, or employee of a corporate party, is sufficient to require the appearance of the deponent; a subpoena need not be issued.

(2) The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated documents or other tangible things relevant to the subject matter of the pending action and within the scope of discovery under MCR 2.302(B). The procedures in MCR 2.310 apply to a party deponent.

(3) A deposition notice and a subpoena under this rule may provide that the deposition is solely for producing documents or other tangible things for inspection and copying, and that the party does not intend to examine the deponent.

(4) A subpoena issued under this rule is subject to the provisions of MCR 2.302(C), and the court in which the action is pending, on timely motion made before the time specified in the subpoena for compliance, may

(a) quash or modify the subpoena if it is unreasonable or oppressive;

(b) enter an order permitted by MCR 2.302(C); or

(c) condition denial of the motion on prepayment by the person on whose behalf the subpoena is issued of the reasonable cost of producing books, papers, documents, or other tangible things.

(5) Service of a subpoena on the deponent must be made as provided in MCR 2.506. A copy of the subpoena must be served on all other parties in the same manner as the deposition notice.

**(B) Inspection and Copying of Documents.** A subpoena issued under subrule (A) may command production of documents or other tangible things, but the following rules apply:

(1) The subpoena must be served at least 14 days before the time for production. The subpoenaed person may, not later than the time specified in the

subpoena for compliance, serve on the party serving the subpoena written objection to inspection or copying of some or all of the designated materials.

(2) If objection is made, the party serving the subpoena is not entitled to inspect and copy the materials without an order of the court in which the action is pending.

(3) The party serving the subpoena may, with notice to the deponent, move for an order compelling production of the designated materials. MCR 2.313(A)(5) applies to motions brought under this subrule.

\* \* \* \* \*

### **Rule 2.306 Depositions on Oral Examination**

\* \* \* \* \*

#### **(B) Notice of Examination; Subpoena; Production of Documents and Things.**

\* \* \* \* \*

(4) The notice to a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition. MCR 2.310 applies to the request.

\* \* \* \* \*

### **Rule 2.310 Requests for Production of Documents and Other Things; Entry on Land for Inspection and Other Purposes**

**(A) Definitions.** For the purpose of this rule,

(1) "Documents" includes writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form.

(2) "Entry on land" means entry upon designated land or other property in the possession or control of the person on whom the request is served for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or a designated object or operation on the property, within the scope of MCR 2.302(B).

#### **(B) Scope.**

(1) A party may serve on another party a request

(a) to produce and permit the requesting party, or someone acting for that party,

(i) to inspect and copy designated documents or

(ii) to inspect and copy, test, or sample other tangible things that constitute or contain matters within the scope of MCR 2.302(B) and that are in the possession, custody, or control of the party on whom the request is served; or

(b) to permit entry on land.

(2) ~~A party may serve on a nonparty~~ a request

(a) to produce and permit the requesting party or someone acting for that party to inspect and test or sample tangible things that constitute or contain matters within the scope of MCR 2.302(B) and that are in the possession, custody, or control of the person on whom the request is served; or

(b) to permit entry on land.

**(C) Request to Party.**

(1) The request may, without leave of court, be served on the plaintiff after commencement of the action and on the defendant with or after the service of the summons and complaint on that defendant. The request must list the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party on whom the request is served must serve a written response within 28 days after service of the request, except that a defendant may serve a response within 42 days after being served with the summons and complaint. The court may allow a longer or shorter time. With respect to each item or category, the response must state that inspection and related activities will be permitted as requested or that the request is objected to, in which event the reasons for objection must be stated. If objection is made to part of an item or category, the part must be specified.

(3) The party submitting the request may move for an order under MCR 2.313(A) with respect to an objection to or a failure to respond to the request or a part of it, or failure to permit inspection as requested. If the motion is based on a failure to respond to a request, proof of service of the request must be filed with the motion. The motion must state that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(4) The party to whom the request is submitted may seek a protective order under MCR 2.302(C).

(5) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(6) Unless otherwise ordered by the court for good cause, the party producing items for inspection shall bear the cost of assembling them and the party requesting the items shall bear any copying costs.

**(D) Request to Nonparty.**

(1) A request to a nonparty may be served at any time, except that leave of the court is required if the plaintiff seeks to serve a request before the occurrence of one of the events stated in MCR 2.306(A)(1).

(2) The request must be served on the person to whom it is directed in the manner provided in MCR 2.105, and a copy must be served on the other parties.

(3) The request must

(a) list the items to be inspected and tested or sampled, either by individual item or by category, and describe each item and category with reasonable particularity,

(b) specify a reasonable time, place, and manner of making the inspection and performing the related acts, and

(c) inform the person to whom it is directed that unless he or she agrees to allow the inspection or entry at a reasonable time and on reasonable conditions, a motion may be filed seeking a court order to require the inspection or entry.

(4) If the person to whom the request is directed does not permit the inspection or entry within 14 days after service of the request (or a shorter time if the court directs), the party seeking the inspection or entry may file a motion to compel the inspection or entry under MCR 2.313(A). The motion must include a copy of the request and proof of service of the request. The movant must serve the motion on the person from whom discovery is sought as provided in MCR 2.105.

(5) The court may order the party seeking discovery to pay the reasonable expenses incurred in complying with the request by the person from whom discovery is sought.

(6) This rule does not preclude an independent action against a nonparty for production of documents and other things and permission to enter on land or a subpoena to a nonparty under MCR 2.305.

## ATTACHMENT 8

### Example Response Letters



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
LANSING

KEITH W. COOLEY  
DIRECTOR

# Memorandum

**DATE:** February 8, 2008

**TO:** DLEG Bureau/Office FOIA Coordinators

**FROM:** Melvin Farmer, Jr., Central FOIA Coordinator

**SUBJECT:** Example FOIA Response Language/Letters

Attached are examples of FOIA response language/letters shared with DLEG from the Assistant Attorney General (AAG) most responsible for FOIA legal representation; and internally created. Please note that the first 5 of these examples/comments are from the AAG and do not necessarily represent the opinions of the Attorney General. Also, note that this is not an exhaustive listing of examples, and you are encouraged to modify the examples as may be necessary for your unit. Moreover, bureau/office FOIA coordinators should make disclosure determinations on a case-by-case basis.

Example response letters include:

1. Ten (10) Day Business Extension
2. Notice Granting/Denying (Fully or Partially) as Warranted
3. Notice Where a Definitive Disclosure Determination Cannot be Made; Deposit Required
4. Request to Answer a Question
5. Request for Legal Research
6. FOIA Referrals to Other Departments
7. Employee Right-to-Know Notice
8. Notice of Interest in Proceeding with FOIA Request
9. Subpoena Notice Letter
10. Request for AG Representation

Note: The DLEG remedial denial/appeal language is used in all examples as appropriated.

I can be reached at (517) 373-0194 regarding any questions about this memorandum.

Attachments



# 1. EXAMPLE FOR 10-DAY BUSINESS EXTENSION

Dear:

This written notice is in response to your [DATE] request for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*, received by this office on [DATE].

You have requested information that you describe as [QUOTE DESCRIPTION GIVEN BY REQUESTER.] [IF TOO LENGTHY]=You have requested information as described in your letter, a copy of which is attached hereto.

In order to determine the existence of any nonexempt information within [NAME OF DEPT. OR AGENCY] that might be responsive to your request, a search must be undertaken [OR OTHER REASON]. For this reason, it is necessary to extend the time for response, as permitted by section 5(2)(d) of the FOIA, through [DATE].

Sincerely,

(Bureau/Office FOIA Coordinator)

**FREEDOM OF INFORMATION**  
**CERTIFICATE OF SEARCH/EXEMPTION LETTER**

**2. A. EXAMPLE OF WRITTEN NOTICE GRANTING/DENYING**  
**[FULLY OR PARTIALLY AS THE PARTICULAR REQUEST WARRANTS]**  
(No Costs Assessed)

Dear:

This written notice is issued in response to your [DATE] request for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*, received by this office on [DATE], with an extension of time to respond taken through [DATE], as permitted under section 5(2)(d) of the FOIA. You have requested information that you describe, as:

“ \_\_\_\_\_ ”

Your request is granted in part and denied in part.

This offices file contains [# of] pages of documents generally constituting copies of \_\_\_\_\_, and other similar material. This part of your request is granted.

The file also contains \_\_\_\_\_.

These documents are exempt from public disclosure under section 13(1)(h) of the FOIA. This part of your request is denied.

Under the FOIA (MCL 15.240), you may submit a written appeal regarding the denial of any portion of your FOIA request to Keith W. Cooley, Director, Michigan Department of Labor & Economic Growth, Attention: Stephen Geskey, Ottawa Building – Fourth Floor, P.O. Box 30004, Lansing, Michigan 48909. Your appeal must include the word “appeal” and identify the reason or reasons for reversal of the denial(s). You also may seek judicial review in circuit court within 180 days after the final denial determination. If you prevail in action, the court may award reasonable attorney fees, costs, and disbursements. If the court finds the department’s action to be arbitrary and capricious, the court shall award, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00.

Sincerely,

(Bureau/Office FOIA Coordinator)

**FREEDOM OF INFORMATION**  
**CERTIFICATE OF SEARCH/EXEMPTION LETTER**

**2. B. EXAMPLE OF WRITTEN NOTICE GRANTING/DENYING**  
**[FULLY OR PARTIALLY AS THE PARTICULAR REQUEST WARRANTS]**

(Costs Assessed)

Dear:

This written notice is issued in response to your [DATE] request for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*, received by this office on [DATE], with an extension of time to respond taken through [DATE], as permitted under section 5(2)(d) of the FOIA. You have requested information that you describe, as:

“ \_\_\_\_\_.”

Your request is granted in part and denied in part.

This offices file contains [# of] pages of documents generally constituting copies of \_\_\_\_\_, and other similar material. This part of your request is granted.

The file also contains \_\_\_\_\_.

These documents are exempt from public disclosure under section 13(1)(h) of the FOIA. This part of your request is denied.

As to the partial granting of your request, the estimated cost of providing the information is computed as shown on the enclosed Freedom of Information Act Invoice form.

Upon receipt of a check in the full amount of \$ \_\_\_\_\_ or 50% \$ \_\_\_\_\_ made payable to the State of Michigan, Michigan Department of Labor & Economic Growth per the enclosed invoice, the department will proceed to make copies of the existing, nonexempt public records responsive to your request.

Under the FOIA (MCL 15.240), you may submit a written appeal regarding the denial of any portion of your FOIA request to Keith W. Cooley, Director, Michigan Department of Labor & Economic Growth, Attention: Stephen Geskey, Ottawa Building – Fourth Floor, P.O. Box 30004, Lansing, Michigan 48909. Your appeal must include the word “appeal” and identify the reason or reasons for reversal of the denial(s). You also may seek judicial review in circuit court within 180 days after the final denial determination. If you prevail in action, the court may award reasonable attorney fees, costs, and disbursements. If the court finds the department’s action to be arbitrary and capricious, the court shall award, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00.

Sincerely,

(Bureau/Office FOIA Coordinator)

3. EXAMPLE OF WRITTEN NOTICE, WHERE A DEFINITIVE DISCLOSURE  
DETERMINATION INITIALLY CANNOT BE MADE; DEPOSIT REQUIRED

Dear:

This written notice is in response to your [DATE] request for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*, received by this office on [DATE], with an extension of time to respond taken through [DATE], as permitted under section 5(2)(d) of the FOIA. You have requested information that you describe, as "copies of the Department of Labor & Economic Growth records for \_\_\_\_\_ as they pertain to \_\_\_\_\_.

Your request is granted as to existing, nonexempt records in the possession of this department responsive to your request. The department estimates a FOIA processing fee of \$ \_\_\_\_\_ based upon copying and mailing costs of \$ \_\_\_\_\_ plus \_\_\_\_\_ hours of staff time, charged at \$ \_\_\_\_\_/hour, to search for, retrieve, review, examine, and separate exempt material, if any. Upon receipt of a 50% deposit in the amount of \$ \_\_\_\_\_, payable by check to the State of Michigan per the enclosed invoice, the department will complete the processing of your request. You will be notified of the balance due (if any) before the mailing of the documents, and of the statutory basis for the exemption of any records in full or in part.

I can be reached at \_\_\_\_\_ regarding any questions about this letter.

Sincerely,

(Bureau/Office FOIA Coordinator)

Enclosure

**FREEDOM OF INFORMATION**  
**CERTIFICATE OF SEARCH/EXEMPTION LETTER**

**4.A. EXAMPLE FOR RESPONDING TO A REQUEST FOR AN ANSWER TO A QUESTION**  
**(Information Provided)**

Dear:

With regard to your question, wherein you ask ["X"], please be informed that the purpose of the FOIA is to provide the public with access to existing, nonexempt public records of public bodies. The FOIA provides that a written request for a public record must describe a public record sufficiently to enable the public body to find it. It is not the purpose of the FOIA to permit persons to secure, from a public body, answers to questions that incidentally may be reduced to a writing as that term is defined under section 2(h) of the FOIA.

(NOTE: Per *Herald Co. v City of Bay City*, 463 Mich 111; 614 NW2d 873 (2000), the Court determined that the FOIA does not establish detailed requirements for a valid request. If, for example, a person submits a request for information in the form of a question, and the public body possesses records containing the information, the public body is obligated to provide the records even though the records were not specifically described in the request.)

However, in the spirit of cooperation [HERE PROVIDE A RESPONSIVE DOCUMENT OR INFORMATION THAT MIGHT RESPOND TO THE QUESTION.]

Sincerely,

(Bureau/Office FOIA Coordinator)

**FREEDOM OF INFORMATION**  
**CERTIFICATE OF SEARCH/EXEMPTION LETTER**

**4.B. EXAMPLE FOR RESPONDING TO A REQUEST FOR AN ANSWER TO A QUESTION**  
**(No Information Provided)**

Dear:

With regard to your question, wherein you ask ["X"], please be informed that the purpose of the FOIA is to provide the public with access to existing, nonexempt public records of public bodies. The FOIA provides that a written request for a public record must describe a public record sufficiently to enable the public body to find it. It is not the purpose of the FOIA to permit persons to secure, from a public body, answers to questions that incidentally may be reduced to a writing as that term is defined under section 2(h) of the FOIA.

(NOTE: Per *Herald Co. v City of Bay City*, 463 Mich 111; 614 NW2d 873 (2000), the Court determined that the FOIA does not establish detailed requirements for a valid request. If, for example, a person submits a request for information in the form of a question, and the public body possesses records containing the information, the public body is obligated to provide the records even though the records were not specifically described in the request.)

Under the FOIA (MCL 15.240), you may submit a written appeal regarding the denial of any portion of your FOIA request to Keith W. Cooley, Director, Michigan Department of Labor & Economic Growth, Attention: Stephen Geskey, Ottawa Building – Fourth Floor, P.O. Box 30004, Lansing, Michigan 48909. Your appeal must include the word "appeal" and identify the reason or reasons for reversal of the denial(s). You also may seek judicial review in circuit court within 180 days after the final denial determination. If you prevail in action, the court may award reasonable attorney fees, costs, and disbursements. If the court finds the department's action to be arbitrary and capricious, the court shall award, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00.

Sincerely,

(Bureau/Office FOIA Coordinator)

(Bureau/Office Address)

## 5. EXAMPLE FOR RESPONDING TO A REQUEST FOR LEGAL SEARCH

Dear:

With regard to your question, wherein you ask ["X"], please be informed that the purpose of the FOIA is to provide the public with access to existing, nonexempt public records of public bodies. The FOIA provides that a written request for a public record must describe a public record sufficiently to enable the public body to find it. The FOIA does not require a public body to research questions of law presented to it. Accordingly, your request is denied.

[OPTIONAL SECOND PARAGRAPH] You may wish to consult with a private attorney who would directly represent your interests, and is the one whose advice would be most helpful to you. Additionally, Michigan statutes can be found in law libraries, and in some public libraries, as well as on the Internet at [www.michiganlegislature.org/law](http://www.michiganlegislature.org/law) .

Under the FOIA (MCL 15.240), you may submit a written appeal regarding the denial of any portion of your FOIA request to Keith W. Cooley, Director, Michigan Department of Labor & Economic Growth, Attention: Stephen Geskey, Ottawa Building – Fourth Floor, P.O. Box 30004, Lansing, Michigan 48909. Your appeal must include the word "appeal" and identify the reason or reasons for reversal of the denial(s). You also may seek judicial review in circuit court within 180 days after the final denial determination. If you prevail in action, the court may award reasonable attorney fees, costs, and disbursements. If the court finds the department's action to be arbitrary and capricious, the court shall award, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00.

Sincerely,

(Bureau/Office FOIA Coordinator)

6. EXAMPLE NOTICE OF FOIA REFERRAL TO OTHER DEPARTMENTS

RE: Freedom of Information Act Request

Dear:

This is in response to your \_\_\_\_\_, 200\_\_ Freedom of Information Act (FOIA) request to the Department of Labor & Economic Growth. You requested a copy of the public file regarding [describe requested information.]

Pursuant to Section 5(2)(b) of the FOIA, I am denying your request. As provided in Section 5(4)(b) of the FOIA, I certify that the requested public records do not exist under the name given or by another name reasonably known to the Department of Labor & Economic Growth.

You may wish to send a new FOIA request to the Department of \_\_\_\_\_ to determine whether that department's records fall under the scope of your request. The address is as follows:

\_\_\_\_\_, FOIA Coordinator  
Department of \_\_\_\_\_  
Lansing, MI 48909  
Phone: ( ) \_\_\_\_ - \_\_\_\_ Fax: ( ) \_\_\_\_ - \_\_\_\_

Under the FOIA (MCL 15.240), you may submit a written appeal regarding the denial of any portion of your FOIA request to Keith W. Cooley, Director, Michigan Department of Labor & Economic Growth, Attention Stephen M. Geskey, Ottawa Building, 4<sup>th</sup> Floor, P.O. Box 30004, Lansing, Michigan 48909. Your appeal must include the word "appeal" and state the reason or reasons for reversal of the denial(s). You may also seek judicial review in circuit court within 180 days after the Department's notice of final determination. If you prevail in such action, the court shall award reasonable attorney fees, costs, and disbursements. If the court finds the Department's action(s) to be arbitrary and capricious, the court shall, in addition to any actual or compensatory damages, award punitive damages in the amount of \$500.00.

Sincerely,

(Bureau/Office FOIA Coordinator)



## 7. EXAMPLE – EMPLOYEE RIGHT-TO-KNOW NOTICE

RE: Employee Right-To-Know Act Notification

Dear:

Please be advised that MCL 423.506, Section 6 of the state's Employee Right-To-Know Act (ERKA) provides that an employer or former employer shall not divulge an employee's or former employee's disciplinary report, letter of reprimand, or other disciplinary action to a third party; to a party who is not part of the employer's organization; or to a party who is not part of a labor organization representing the employee, without written notice to the employee. Written notice must be sent by first class mail to the employee's/former employee's last known address on or before the day the information is divulged from the employer's personnel records. Written notice is not required when:

- The employee has specifically waived written notice as part of a written, signed employment application with another employer.
- Legal action or arbitration orders the disclosure to a party in the legal action or arbitration.
- A government agency requests the information as a result of a claim or complaint by an employee.

Pursuant to the above, this is to notify you, in response to a request from a third party, the department is divulging information related to disciplinary action in your records.

Sincerely,

(Bureau/Office FOIA Coordinator)

Enclosure

cc:

\_\_\_\_\_  
Personnel File

8. EXAMPLE NOTICE OF INTEREST IN PROCESSING REQUEST

RE: \_\_\_\_\_

Dear:

This is in follow-up to our letter/invoice of \_\_\_\_\_ (copy enclosed),  
in response to your Freedom of Information Act (FOIA) request, received  
\_\_\_\_\_, requesting  
\_\_\_\_\_.

As you are aware, pursuant to MCL 15.234 of the FOIA, the projected costs to comply  
with your request is \$ \_\_\_\_\_.

To date, we have received no information regarding our \_\_\_\_\_, 200\_\_  
letter/invoice. Please be informed that unless we receive written notification and/or payment  
within the next 30 days, we will consider that you are no longer interested in us proceeding with  
your request. Thusly, pursuant to MCL 15.233, Section 3(2) of the FOIA, your request will be  
kept on file and routinely culled from our records. Any subsequent written request(s) for the  
same records/information will be treated as a new FOIA request.

Sincerely,

(Bureau/Office FOIA Coordinator)

Enclosures

## 9. EXAMPLE OF SUBPOENA NOTICE LETTER

RE: Subpoena Fees/Documents

Dear:

This in response to the subpoena, received \_\_\_\_\_, 200\_\_ to the Michigan Department of Labor & Economic Growth (DLEG), [Agency Name] to produce copies of certain records/documents regarding [describe requested information] by \_\_\_\_\_, 200\_\_.

Please be informed we are prepared to release the records requested subject to the following applicable conditions of the Michigan Court Rules (MCR 2.305, 2.306, and 2.310) or the Revised Judicature Act:

- ☐ There was no fee (\$6.00) check included with the subpoena for producing documents; or witness fee check (\$12.00). Upon submission of the applicable fee(s) a copy of the records will be forwarded via U.S. mail. Should there be additional charges, you will be billed accordingly for costs exceeding \$20.00 for labor records search and copying; per page copy costs, postage, copies of audio tapes/discs, etc.
- ☐ If there is information in the records subject to state/federal privacy provisions, it will be redacted.
- ☐ If there are reports/records from HIPPA covered entities, the information/records will not be released without a written release authorization from the affected persons.
- ☐ It is understood that this subpoena does not require DLEG staff to personally appear or testify regarding this matter.

I can be reached at ( ) \_\_\_\_ - \_\_\_\_ regarding any questions about this letter.

Sincerely,

(Bureau/Office FOIA Coordinator)

(Bureau/Office Address)

10. EXAMPLE OF REQUEST FOR REPRESENTATION

A. Without Attachments/Contacts

[Date]

Ms. Carol Isaacs  
Deputy Attorney General  
Department of Attorney General  
525 W. Ottawa Street  
Lansing, MI 48909

RE: \_\_\_\_\_ vs. Department of Labor & Economic Growth

Dear Ms. Issacs:

Please find attached a Summons and Complaint received via U.S. Mail on \_\_\_\_\_, 200\_\_ in the above referenced matter.

This letter is a request for representation by the Attorney General in this matter.

Sincerely,

Keith W. Cooley  
Director

(Bureau/Office Address)

10. EXAMPLE OF REQUEST FOR REPRESENTATION

B. With Attachments/Contacts

[Date]

Ms. Carol Isaacs  
Deputy Attorney General  
Department of Attorney General  
525 W. Ottawa Street  
Lansing, MI 48909

RE: \_\_\_\_\_ vs. Department of Labor & Economic Growth

Dear Ms. Issacs:

Please find attached a Summons and Complaint (Case No.: \_\_\_\_\_) received via U.S. Mail on \_\_\_\_\_, 200\_\_ in the above referenced matter. Also attached is information relevant to this matter.

This letter is a request for representation by the Attorney General in this matter.

Primary department contacts regarding this matter are:

_____, Director	(and)	Melvin Farmer, Jr.
[Bureau/Office Name]		DLEG FOIA Coordinator
Phone: ( ) ____ - ____		Phone: (517) 373-0194

Sincerely,

Keith W. Cooley  
Director

cc: Bureau/Office Director  
Melvin Farmer

(Bureau/Office Address)

# **ATTACHMENT 9**

## **Records Management – Excerpts**

Department of History, Arts and Libraries  
Records Management Services

EXCERPTS

EXCERPTS



# State of Michigan

## RECORDS MANAGEMENT MANUAL



*Discover Your Connections*

EXCERPTS

EXCERPTS

## **Introduction to Records Management Services**

Michigan's Records Management program began in 1952 when legislation was enacted following the disastrous fire of the State Office Building (now the Lewis Cass Building).



In 2002, the **Records Management Services** were transferred from the Department of Management and Budget to the Department of History, Arts and Libraries. In 2004, state and local government records management services were merged.

The Records Management Services provides expertise and assistance to state and local government agencies by:

- establishing, implementing, and maintaining standards, procedures, and guidelines for record keeping;
- providing education, training, and information programs to agencies regarding records management issues;
- providing micrographics and document imaging services to agencies;
- establishing Retention and Disposal Schedules for public records by appraising their administrative, fiscal, legal and archival value; and
- providing storage and retrieval of inactive records at the State Records Center (state agencies only).

Updated 06/26/2007

### **Records Management Officers (state agencies only)**

Records Management Officers (RMO) are the primary departmental contact for coordination assistance with Records Management Services.

#### **RMO Duties:**

- Coordinate agency review of disposal notices
- Identify issues/needs that need to be addressed by the Records Management Services
- Resolve internal issues identified by Records Management Services
- Assist agency staff with following records management procedures
- Be involved with decisions affecting records management within their agency

**Who is my department's Records Management Officer?**

#### **Department**

Labor and Economic Growth

#### **RMO Officer**

Leslie Christy  
[christyl@michigan.gov](mailto:christyl@michigan.gov)



## **Records Analyst Assistance**

Records Management Services provides professional analytical, consulting, and retention schedule assistance to state and local government agencies.

Records analysts provide a variety of services to agencies, including:

- *files improvement*
- *records maintenance*
- *electronic records retention*
- *imaging systems for public records*
- *organizing of electronic files.*
- *file systems design and procedures*
- *file equipment and supply recommendations*
- *micrographics application feasibility studies*
- *imaging system feasibility and analyses*

Professional records analysts will work with your department or agency to develop Record Retention and Disposal Schedules. These schedules are your "road map" to ensure proper creation, control, storage and disposal of records.

**For additional information, or to request a revision to your agency's schedule, please contact Debbie Gearhart at [gearhارد@michigan.gov](mailto:gearhارد@michigan.gov)**

Updated 06/26/2007

### **RMS Contact Information**

Debbie Gearhart, CRM  
Records Management Services  
P.O. Box 30026  
3405 N. Martin Luther King Jr. Blvd.  
Lansing, Michigan 48909  
Phone: (517) 335-9132  
Fax: (517) 335-9418  
E-mail: [gearhارد@michigan.gov](mailto:gearhارد@michigan.gov)

Additional staff contact information can be found in the State of Michigan Telephone Directory.

Updated 06/26/2007

### **III. RETENTION AND DISPOSAL SCHEDULES**

#### **A. PURPOSE AND SIGNIFICANCE**

Each day state government agencies create, receive, transmit and store huge volumes of letters, e-mail messages, computer printouts, contracts, databases, receipts, vouchers and countless other records. The information contained in these records must be properly managed so that it is preserved and readily available for reference when it is needed. It is also important that these records are disposed of at the appropriate time, and in a systematic manner, so they do not waste space or become a liability to the agency.

Records analysts employed by Records Management Services develop Retention and Disposal Schedules. Schedules are comprehensive inventories of all public records, regardless of their physical format. Schedules define how long each record should be retained, and they explain how a record's retention period is divided between the creating office and the State Records Center, if applicable. The State Records Center provides off-site storage for many records that are not actively used by the creating agency. Retention and Disposal Schedules also indicate which records have archival value, and when those records should be transferred to the Archives of Michigan.

According to Michigan law, no public records may be destroyed without the authorization of an approved Retention and Disposal Schedule. This law exists to prevent the destruction of public information as the result of the opinion of a single state employee. Retention and Disposal Schedules are submitted to the agency, the Records Management Services, the Auditor General, the Attorney General, the Archives of Michigan, and the State Administrative Board for their respective approvals. Approved Retention and Disposal Schedules have the force of law.

The purpose of a Retention and Disposal Schedule is to provide a systematic means of controlling the creation, storage and disposal of records. It is based upon thousands of Federal Statutes and regulations, plus state and local requirements and the agency's fiscal and administrative needs. Adherence to a Retention and Disposal Schedule will assist agencies with their compliance with these requirements. Serious problems can and do arise from not having an accurate schedule or by not following the schedule that has been established. Grievances, criminal prosecution, Freedom of Information requests, evidence of payments and endless other daily activities all require records to be available efficiently and promptly.

Note: Agencies must immediately cease the destruction of all relevant records (even if destruction is authorized by an approved Retention and Disposal Schedule) if they receive a FOIA request, if they believe that an investigation or litigation is imminent, or if they are notified that an investigation or litigation has commenced. If relevant records exist in electronic formats (such as e-mail, digital images, word processed

documents, databases, etc.), the agency may need to notify the Department of Information Technology. Failure to cease the destruction of relevant records could result in penalties.

## B. THE INVENTORY PROCESS

When records analysts prepare Retention and Disposal Schedules they conduct inventories of all of the public records used by a particular office, even if the records will never be stored at the State Records Center. The inventory process will include the surveying of filing cabinet contents, and a discussion about databases or other electronic records used by the office. The analyst will identify why records are created, and how they are used. This information will be used to define the operational values of the various records. Special inventory forms are used to ensure that adequate information is gathered about each records series.

## C. GENERAL RETENTION SCHEDULES

General Retention Schedules are developed to address categories of records that are common to most offices in state government. General Schedules are intended to efficiently promote uniformity of retention periods and consistency in government practices. With the exception of General Schedule #1 for nonrecords, the records described on the General Schedules are 1) deemed necessary for the continued effective operation of state government, 2) constitute an adequate and proper recording of agency activities, 3) protect the legal rights of the government of the State of Michigan and of the people.

All public records that are not listed on a General Schedule must be inventoried on agency-specific schedules. If a record is listed both on a General Schedule and on an agency-specific schedule, the agency should follow its specific schedule, instead of the General Schedule. However, agencies are not required to create a record that is listed on a General Schedule. The retention periods listed on General Schedules only apply to agencies that actually create those records.

The following is a listing of the General Schedules that have been issued by the State of Michigan. Copies of these schedules may be obtained from the Records Management Services at (517) 335-9132.

- General Schedule #1--Non-Records (Approved December 15, 1998)
- General Schedule #2--Accounting Records (Approved January 18, 1983)
- General Schedule #3--Personnel Office Records (Approved October 5, 1981)
- General Schedule #4--Employee Personnel File - Active Employees (Approved March 5, 1996)
- General Schedule #5--Administrative Records (Approved January 17, 2006)
- General Schedule #6--Accounting and Purchasing Records (Approved March 20, 2001)
- General Schedule #7--Human Resource Records (Approved December 2, 2003)

## **VI. PROCEDURES**

Retention and Disposal Schedules indicate when records should be destroyed, transferred to the State Records Center for temporary storage, or sent to the Archives of Michigan for permanent preservation. Specific procedures have been developed for all of these activities, and they are published in the *DMB Administrative Manual to State Government*.

### **A. TRANSFERRING RECORDS TO THE STATE RECORDS CENTER AND THE ARCHIVES OF MICHIGAN**

The State Records Center provides for the temporary storage of inactive state government records. Records stored at the State Records Center remain under the exclusive control of the creating agency, and may only be accessed by individuals with authorization for the agency. The State Records Center has fire and security protection for all records in its custody. The State Records Center is located at 3405 N. Martin Luther King Blvd. in Lansing, approximately three miles North of downtown.

The Archives of Michigan is responsible for the permanent preservation of public records that document significant government activities. Records that are transferred to the State Archives are protected from tampering, theft, fire and environmental damage. All records transferred to the Archives are carefully preserved so they will remain available to future generations. The Archives of Michigan is located in the Michigan Library and Historical Center at 702 West Kalamazoo, west of the State Capitol in downtown Lansing.

Records arrive at the Archives in one of two ways. Some records are sent to the State Records Center for temporary storage before they are transferred to the Archives. In these situations, the Records Center automatically ships the records to the Archives at the appropriate time. Other records are transferred by agencies directly to the Archives, and therefore never spend time in the State Records Center.

The State Records Center and the Archives of Michigan use the same software, Versatile Enterprise, to manage records in our custody. As a result, we developed uniform procedures for transferring records to both facilities. See Procedure 0910.03 for instructions about shipping records.

## B. ACCESSING RECORDS STORED AT THE STATE RECORDS CENTER

Records stored in the State Records Center may be accessed by the creating agency in many ways. State employees may visit the State Records Center to access the records they need to use, or the State Records Center will ship records back to the creating agency (usually within one day) via interdepartmental mail. Requests for the retrieval of records stored at the State Records Center may be submitted by fax, ID mail, e-mail, telephone and by using a form on the Records Center's web page. See Procedure 0910.04 for instructions about accessing records stored at the State Records Center.

## C. ACCESSING RECORDS PRESERVED BY THE ARCHIVES OF MICHIGAN

The Archives organizes, describes and indexes all of the records in its custody to help researchers find the information they need. All records at the Archives are open to state employees and the public for research, unless a law requires that the record be kept confidential. State employees are encouraged to contact and visit the Archives to use the records from their agency or other government agencies. Reference archivists can help determine which records will be of use to researchers and can answer many questions by phone, fax, interdepartmental mail, e-mail or on-site visit. State employees who know the Records Center Lot Number, the Archives Accession Number or the Barcode Number that was assigned to the records when they were shipped out of the office will be able to find the records they are seeking much faster than those who do not.

The Archives of Michigan carefully protects the records in its custody because they are unique and valuable. As a result, all researchers are required to complete a registration form when they visit, and the storage areas are closed. All records are brought into a monitored reading room for use by researchers, and may not be removed from the Archives facility. Therefore, they will not be returned or loaned to an agency. Agency records in the custody of the Archives are preserved in storage rooms that have state-of-the-art security (theft and fire) and environmental protection (temperature and humidity). Materials can be photocopied at no charge to state agencies. However, there is a fee for photographic reproductions.

The reading room is open to the public Monday through Friday from 10:00 a.m. to 4:00 p.m. (except state holidays). Advance appointments are not required, but they may make research visits more worthwhile. Additional information about the records that are preserved at the Archives of Michigan, and the research services that are available, can be obtained from the Archives' web site at:  
<http://www.michigan.gov/statearchives/>

#### D. RECORDS CENTER DISPOSAL PROCESS

In accordance with Retention and Disposal Schedules, on a regular basis the State Records Center identifies records in its holdings that may be destroyed because they no longer have value to the State. In addition, some of the records stored at the Records Center are eventually transferred to the Archives. As this occurs, Records Disposal Notices are prepared, and are sent to the creating agency for approval before any record destruction or transfer to the Archives takes place. See Procedure 0910.05 for instructions about handling Records Disposal Notices.

#### E. DESTRUCTION OF RECORDS BY AGENCIES

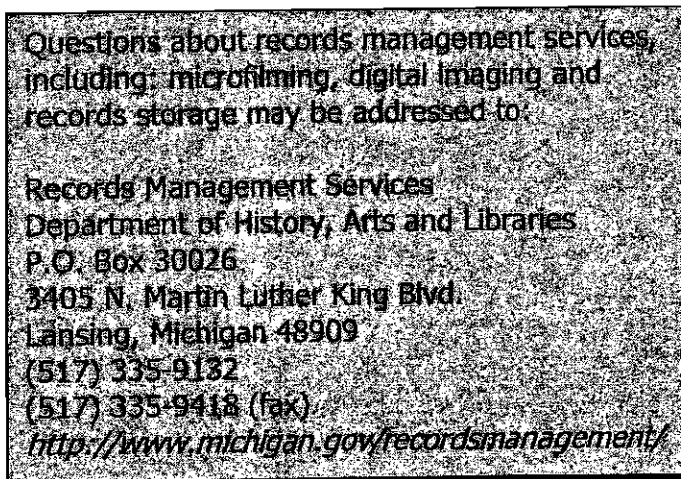
In some instances, public records complete their entire retention period in the office of creation. In accordance with the provisions of an approved Retention and Disposal Schedule, agencies may destroy these records.

##### Confidential Records Destruction

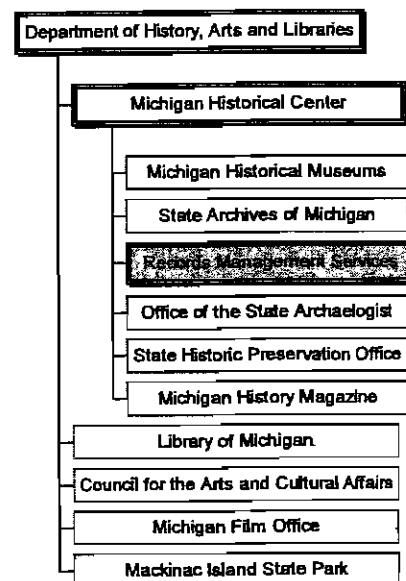
Some public records contain sensitive or confidential information. These records should not be placed in a regular trash or recycle bin when they are eligible to be destroyed. It is important that agencies ensure that these records be destroyed in a manner that prevents the inappropriate release of the information. The State of Michigan administers a master contract with a vendor that complies with the state's requirements for confidential destruction of records. Agencies that are interested in using this contract should contact the vendor:

##### Certified Document Destruction

Attention: Brian Dorosz  
1-800-433-7876



Organization Chart



## **ATTACHMENT 10**

### **DLEG FOIA Coordinators**

DEPARTMENT OF LABOR & ECONOMIC GROWTH - FOIA COORDINATORS/LIAISONS

<u>Agency/Bureau/Office (Location)</u>	<u>Name</u>	<u>Telephone #</u>	<u>Fax #</u>
<b>Central FOIA Office - (Ottawa Bldg)</b>	<i>Mel Farmer</i>	517-373-0194	517-335-4037
	<i>Vera McKinney, Sec.</i>	517-335-3327	517-335-4037
<b>DLEG APPEALS OFFICER - (Ottawa Bldg)</b>	<i>Stephen M. Geskey</i>	517-241-7257	517-241-7326
<b>Adult Education – (Victor Office Bldg)</b>	Janice Vernon	517-373-7428	517-335-3630
<b>Commercial Services, Bureau of – (Okemos)</b>	Stephen J. Gobbo	517-241-9268	517-241-9296
- All Professions/Occupations	Ann Paruk, 2 <sup>nd</sup> Bill Wilhelm	517-241-9202	517-241-9296
- Corporation Division	Kit Murphy	517-241-6424	517-241-6445
<b>Commission for the Blind - (VOB)</b>	Carla Haynes	517-373-2063	517-335-5140
<b>Construction Codes - (Okemos)</b>	David Vigas	517-241-9313	517-373-8547
	Kathy Stump	517-241-9309	517-241-9570
<b>Disability Concerns – (VOB)</b>	William B. Milzarski	517-335-6399	517-335-7773
<b>Employment Relations, Bureau of – (Detroit)</b>	Nancy Pitt	313-456-3517	313-456-3511
	Ruth Okun	313-456-3519	313-456-3511
<b>Financial &amp; Insurance Services, Office of (Including Mortgage Info)</b>			
- Division of Insurance - (Ottawa)	John R. Schoonmaker	517-373-2707	517-335-1727
- Banks/Savings/Loans/Credit Unions/BIDCOs	Marcia Miller	517-373-4117	517-373-6739
- Consumer Finance Companies-(Ottawa)	Nancy Hill	517-373-7240	517-335-1727
- Licensing Division - (Ottawa)	Deborah L. Brown	517-241-6367	517-373-0549
<b>Fire Services (Fire Marshal) - (MEDC Bldg)</b>	Doreen Fedewa	517-241-8585	517-335-4061
<b>Human Resources, Office of - (Ottawa)</b>	Donna Holberg	517-373-3628	517-373-7834
(Voice Mail 24-11579)	(Lynn Simons, Assist)	517-373-3628	517-373-7834
<b>Labor Market Information – (Detroit)</b>	Bruce Weaver	313-456-3091	313-456-3097
<b>Landbank Authority - (MEDC Bldg)</b>	Fred Durhal, Jr.	517-335-7810	517-241-0881
<b>Liquor Control Commission – (GOB)</b>	Karen Hogan	517-322-1359	517-322-5188
<b>Media/Public Relations – (Ottawa)</b>	Lori Donlan	517-373-2470	517-241-1580
<b>MI Employment Security Bd of Review (Ottawa)</b>	R. Douglas Daliqga	517-241-7333	517-241-7326
<b>MIOSHA – (GOB) Cindy Ross (322-1743)</b>	Lisa Spitzley	517-322-5064	517-322-1505
<b>MSHDA – (Detroit)stonec@michigan.gov</b>	Clarence Stone	313-456-3601	313-456-3571
<b>(Lansing)kremenskip@michigan.gov</b>	Pat Kremenski (Assistant)	517-373-8372	517-241-8471
<b>Michigan Rehabilitation Services - (VOB)</b>	Harold Wasner	517-373-6685	517-373-0565
<b>Deb Wiese 517-335-0389 (5-7277 Fax)</b>	Gerry Moore	517-373-4027	517-373-4479
<b>Michigan Tax Tribunal - (Ottawa)</b>	Peter Kopke	517-335-1272	517-373-1633
<b>Postsecondary Services - (VOB)</b>	Melinda Mazurek	517-373-3820	517-373-2759
<b>Public Service Commission,MI-(MercantileWay)</b>	Mary Kunkle	517-241-6160	517-241-6181
<b>SOAHR (Hearings) - (Ottawa)</b>	Carla Lechler	517-241-4349	517-241-4999
<b>Spanish Speaking Affairs/COSSA - (Ottawa)</b>	Mary Lou Mason	517-373-8339	517-373-0176
<b>State Boundary Commission - (Mercantile)</b>	Christine Holmes	517-241-4272	517-241-9822
<b>UIA-Unemployment Insurance Agency (Detroit)</b>	William DiSessa	313-456-2941	313-456-2922
	Anita Friday	313-456-2907	313-456-2910
<b>Wage &amp; Hour Division – (Mercantile)</b>	Susan Shelton	517-335-0987	517-335-0077
<b>Workers Compensation Agency – (GOB)</b>	Kenneth Smith	517-322-5937	517-322-1808
<b>Workers Comp Appellate Comm-(GOB)</b>	Laura Campbell	517-636-4677	517-636-4699
<b>Workforce Programs – (VOB)</b>	Sharon Zeien	517-241-2430	517-241-8217
<b>- Rapid Response Section (WARN)</b>	Deb Hennesey	517-335-1943	517-373-4648
<b>Governor's Office (Romney Bldg)</b>	Coffiann Hawthorne	517-373-6469	517-241-0912
<b>DLEG Litigation Coordinator</b>	(TBD)	(TBD)	(TBD)
<b>Attorney General (Williams Bldg)</b>	Tom Quasarano, AAG	517-373-6889	517-241-9982



## **ATTACHMENT 11**

**DMB Procedure 2410.01 (FOIA)**

PROCEDURE 2410.01  
Issued January 1, 1994

**SUBJECT:** Freedom of Information Act (FOIA).

**APPLICATION:** Executive Branch Departments and Sub-units.

**PURPOSE:** To ensure consistent application of the requirements of the Act.

**CONTACT AGENCY:** Respective agency's designated FOIA Officer(s) and/or the Department of the Attorney General (AG) - Opinion & Public Information Unit.

**TELEPHONE:** 517/373-4798 (AG)

**FAX:** 517/335-4213

**SUMMARY:** The FOIA deals with requests from any person for "public documents."

With few exceptions, any public record is available for viewing or copying by any person who requests the document with sufficient specificity that the document can be identified.

In general, all requests for documents (whether written or oral) must be responded to within 5 business days following the date the request is received. Under specified circumstances, a 10 day extension may be obtained.

Failure to respond constitutes a denial. Denials give the requestor the right to go to court to obtain the documents.

**APPLICABLE FORMS:** Vary with the department.

**PROCEDURES:**

**Requestor:**

- May ask for a public record, or records, in writing or orally.
- Must describe the public record sufficiently to enable the receiving public body to find the requested record.
- Has a right to inspect, copy or receive copies of public records regarding a public body.
- Has a right to subscribe to future issuances of public records which are created, issued or disseminated on a regular basis. Subscriptions are valid for up to 6 months and may be renewed.

- If denied access to a public record, may begin an action in the circuit court for the county in which the complainant resides or has his or her principal place of business, or the circuit court for the county in which the public record or an office of the public body is located, to compel disclosure of the public record.
  - If the original request was made orally, must confirm the oral request in writing not less than 5 days prior to commencing the action in circuit court.
  - If successful, may be awarded reasonable attorney's fees, costs and disbursements, which shall be assessed against the public body that issued the denial.
  - If successful, and the court finds that the public body has arbitrarily and capriciously violated the Act by refusal or delay in disclosing or providing copies of a public record, may be awarded punitive damages in the amount of \$500, which shall be assessed against the public body pursuant to whose public function the public record was kept or maintained.

**Agency:**

- Must designate, in writing, the person responsible for approving a denial of a request for a public record, if the responsible person is other than the chief administrative officer of the Executive Department or Sub-unit.
- Must respond to oral or written requests within 5 business days from the date of receipt of the request.
  - If the requestor agrees in writing prior to the expiration of the 5 business days, the response may be provided later than the 5 day period mentioned above, in accordance with the time frames set forth in the written agreement (see Sample Letter 1).
  - Under unusual circumstances, may issue only 1 time per request, a notice extending the date for response for not more than 15 business days after the date of receipt of the request. The notice must contain the reason for the delay and a date by which the response will be provided (See Sample Letter 1).
    - An "unusual circumstance" is either or a combination of the following where necessary to process a request:
      - the need to search for, collect or appropriately examine a voluminous amount of separate and distinct records as the result of a single request; or
      - the need to obtain records from numerous field offices, facilities or other establishment which are located apart from the office receiving or processing the request.

- A response means:
  - Granting the request in person or in writing (See Sample Letter 2);
  - A written notice denying the request (See Sample Letter 3); or
  - A written notice granting the request in part and denying the request in part (See Sample Letter 4).
- Failure to respond within the statutory deadlines constitutes a denial.
- In responding to a request, do the following:
  - Determine if the record is exempt.
    - If yes, or unknown, contact the designated FOIA officer for a final determination and processing of the denial.
    - If no:
      - Determine if the document is readily available.
        - If yes, offer the records to the requestor for review and note taking. If this is not acceptable to the requestor, make copies in accordance with the payment procedures described on page 4-5 below.
        - If no, to provide time to get the materials, negotiate an extension with the requestor or send a 10 day extension letter.
- If the request is denied:
  - The written notice of denial constitutes a final determination by the public body.
    - The written notice must contain (see Sample Letters 3 and 4):
      - An explanation of the basis for the determination that the public record or a portion of the public record is exempt from disclosure, or an explanation of the basis for the denial;
      - A certificate that the public record does not exist under the name given by the requestor, or by another name reasonably known to the public body;
      - A description of the public record, or information on a public record which is separated or deleted, if a separation or deletion is made.

- A full explanation of the requestor's right to judicial review, including notification of the right to receive attorney's fees and damages.
- The signature of the chief administrative officer, or a designee of the chief administrative officer, of the public body.
- Must provide a certified copy of a public record, if the requestor asks for such certification.
- Must furnish the requestor with:
  - A reasonable opportunity to inspect and examine its public records.
  - Reasonable facilities for making memoranda or abstracts from its public records during usual business hours.
- May make reasonable rules necessary to protect its records and prevent excessive and unreasonable interference with the discharge of its functions.
- Except as discussed below:
  - Is not required to compile, summarize or report information.
  - Is not required to create a new public record.
  - Is not required to produce edited copies of an already existing public record.
- Must use the most economical means available to provide copies of public records.
- Must separate exempt from non-exempt material and make the non-exempt material available.
  - When designing a public record, the public body, to the extent practicable, is to facilitate the separation of exempt and non-exempt materials.
  - If the separation is not readily apparent to a requestor, the public body is to generally describe the exempted material, unless that description would reveal the contents of the exempt information.
- Must establish and publish procedures and guidelines to implement Section 4 of the Act, concerning the charging of fees.
- May charge a fee for providing a copy of a public record.
  - Except as may be provided in another Act, the fee can be no more than the:
    - Actual mailing costs; and

- Actual incremental cost of duplication or publication, including labor, calculated using the hourly wage of the lowest paid, full-time, permanent clerical employee; and
- Cost of search, examination, review, deletion and separation of exempt from non-exempt information, calculated using the hourly wage of the lowest paid, full-time, permanent clerical employee.
- Fees are not to be charged for the cost of examination, review, deletion and separation of exempt from non-exempt information, unless failure to charge a fee would result in unreasonably high costs to the public body, and the public body identifies the nature of the unreasonably high costs.
- Fees may be waived or reduced if the public body determines that a waiver or reduction is in the public interest.
- If a requestor files an affidavit stating that he/she is a recipient of public assistance, or stating facts showing an inability to pay the cost due to indigence, the public body must waive the first \$20 of the fee for each request.
- A good faith deposit from the requestor, of not more than 1/2 of the total expected fee may be requested by the receiving agency if the anticipated amount exceeds \$50.
- FOIA fees are not to be charged for public records prepared under an act or statute specifically authorizing the sale of those records to the public.
- Must designate a person to accept the fees paid, and provide that information to the requestor.
- Must develop a method to communicate payment of fees to the person responsible for handling the FOIA response, particularly in those cases where a deposit is required prior to copies being made of requested material.
- Must publish and make available to the public the following:
  - Final orders or decisions in contested cases, and the records on which they were made.
  - Promulgated rules.
  - Other written statements which implement or interpret laws, rules or policy, including but not limited to guidelines, manuals, and forms with instructions, adopted and used by the agency in the discharge of its functions.
  - Publications in pamphlet, loose-leaf or other appropriate form in printed, mimeographed or other written matter.
- The following public records may be exempt from disclosure under this Act; however, other statutes may prohibit the release of these records:

- Information of a personal nature, where public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
  - Interfere with law enforcement proceedings.
  - Deprive a person of the right to a fair trial or impartial administrative adjudication.
  - Constitute an unwarranted invasion of personal privacy.
  - Disclose the identity of a confidential source or, if the record is compiled by a criminal law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
  - Disclose law enforcement investigative techniques or procedures.
  - Endanger the life or physical safety of law enforcement personnel.
- A public record which, if disclosed, would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure outweighs the public interest in non-disclosure.
- Records or information specifically described and exempted from disclosure by statute.
- Information, the release of which would prevent the public body from complying with 20 U.S.C. § 1232g. (This section deals with access to education records maintained by an educational agency or institution which receives federal funds.)
- A public record or information which is furnished by the public body originally compiling, preparing or receiving the record or information to or from a public officer or public body, in connection with the performance of the duties of the public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.
- Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy, if:
  - The information is submitted upon a promise of confidentiality by the public body.
  - The promise of confidentiality is authorized by the chief administrative officer of the public body at the time the promise is made.

- A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person on request.
  - This exemption does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license or other benefit.
- Information or records subject to attorney-client privilege.
- Information or records subject to the physician-patient, psychologist-patient, minister, priest or Christian science practitioner, or other privilege recognized by statute or court rule.
- A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals or, if a public opening is not to be conducted, until the time for receipt of bids or proposals has expired.
- Appraisals of real property to be acquired by the public body, until:
  - An agreement is entered into; or
  - Three years have elapsed since the making of the appraisal, unless related litigation has not yet ended.
- Test questions and answers, scoring keys and other examination or data used to administer a license, public employment or academic examination, unless the public interest in disclosure outweighs the public interest in non-disclosure.
- Medical, counseling, or psychological facts or evaluations concerning an individual, if the individual's identity would be revealed by disclosure of those facts or evaluations.
- Communications and notes within a public body, or between public bodies, of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to final agency determination of policy or action.
  - This exemption does not apply unless the public body shows that the public interest in encouraging frank communications between officials and employees of public bodies clearly outweighs the public interest in disclosure.
  - This exemption does not constitute an exemption under State law, or for purposes of § 8(h) of Public Act 267 of 1976.



- Records of law enforcement communication codes, or plans for deployment of law enforcement personnel which, if disclosed, would prejudice a public body's ability to protect the public safety, unless the public interest in disclosure outweighs the public interest in non-disclosure in the particular instance.
- Information which would reveal the exact location of archeological sites.
  - The Secretary of State may promulgate rules to provide for disclosure of the location of archeological sites for, purposes relating to preservation or scientific examination of sites.
- Testing data developed by a public body in determining whether a bidder's products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications.
  - This section does not apply if more than 1 year has passed from the time the public body has completed the testing.
- Public records of a police agency or department, if the release would do any of the following, unless the public interest in disclosure outweighs the public interest in non-disclosure:
  - Identify or provide a means of identifying an informer.
  - Identify or provide a means of identifying a law enforcement undercover officer, or an agent or a plain clothes officer, as a law enforcement officer or agent.
  - Disclose the personal addresses or telephone numbers of family members, relatives, children or parents of law enforcement officers or agents.
  - Disclose operational instructions for law enforcement officers or agents.
  - Reveal the contents of staff manuals provided for law enforcement officers or agents.
  - Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or others who furnish information to law enforcement departments or agencies.
  - Identify, or provide a means of identifying, a person as a law enforcement officer, agent or informer.
  - Disclose personnel records of law enforcement agencies.

- Identify, or provide a means of identifying, residences which law enforcement agencies are requested to check in the absence of their owners or tenants.

Other Information/Thoughts/Suggestions:

- Develop a method of tracking FOIA requests and responses, to assure that the time frames set forth in the Act are complied with and also to assure that all persons involved in the process will know which items have been released in the past, and which have not.
- This method should include means for determining:
  - Where exempt material has been eliminated from released documents.
  - Circumstances under which denials were made.
  - Appeals to denials, and the results of such appeals.
- Requestors who inspect documents on-site should:
  - Be provided a designated space.
  - Review documents in the presence of a staff member.
  - Not be allowed to remove documents from files, or from the premises unless those documents are copied specifically for the requestor by staff of the affected public body.
- If the requestor seeks a certified copy of a document, the designated official should place: "I certify that this is a true and exact copy." on the face of the document, and sign his or her name below the statement.
- Some departments (e.g., Corrections) have special additional authority concerning requests for information. If your agency falls within this category, refer to specific procedures for your agency.

## **ATTACHMENT 12**

### **FY08 FOIA Cost Guidelines/Invoice Form**

**ATTACHMENT 12 . FY08 FOIA Cost Guidelines/Invoice Form**

JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH

KEITH W. COOLEY  
DIRECTOR

**Memorandum**

**DATE:** September 27, 2007

**TO:** DLEG FOIA Coordinators

**FROM:** Melvin Farmer, Jr., DLEG Central FOIA Coordinator

**SUBJECT:** FY08 FOIA Cost Guidelines

**A. General Costs**

As you are aware, the FOIA provides that a public body may recover costs it deems that failure to charge would result in unreasonably high costs to the public body. Therefore, pursuant to Section 4(3) of the FOIA, effective October 1, 2007, the following fees/charges are recommended as applicable costs to comply with certain FOIA requests where costs recovery is deemed appropriate. Such costs are, usually, based of the volume of records, time, and costs involved to comply with the request, including labor costs (hourly wages and benefits) of the lowest paid capable employee(s) necessary to comply with the request for records search, retrieval, duplication, and records examination for deletion and separation of any exempt from nonexempt information; 2) per page cost duplication at \$.25 per page, if any; and 3) mail costs, if any. The recommended fees are:

Duplication Per Page	\$.25
Labor: Hourly Rate (General Office Assistant 5) (Includes 2% increase & benefits)	*\$23.00
Hourly Labor (including benefits) of most capable employee—usually only applicable to confidential/highly technical separation of exempt from nonexempt information.	Actual
Mailing Costs	Actual
Bulk Mailing Costs Per Meter Reads	See B.
Photo Discs (Each)	\$15.00
Photo Sheets Per Page	\$1.00
Audio Tapes	Actual
Other	Actual

\*Hourly Labor Cost (General Office Assistant 5)

$\$15.88 \times 2\% \text{ increase} = \$.32 + \$15.88 = \$16.20 \times 42\% \text{ for benefits} = \$6.80 +$   
 $\$16.20 = \$23.00/\text{hr.} - \text{Charge in increments of 15 minutes}$

**B. Bulk Mailing Charges Based on Actual Meter Readings**

<b>Pages</b>	<b>Weight</b>	<b>Charge</b>	<b>Per Page</b>
25	4 oz.	\$1.31	\$0.052
35	5.6 oz.	\$1.65	\$0.047
50	8.3 oz.	\$2.16	\$0.043
60	9.9 oz	\$2.33	\$0.039
70	11.5 oz	\$2.67	\$0.038
80-125	13.1 oz - 1 lb.14 oz	\$4.60	\$0.045
250	2 lbs. 13.6 oz	\$5.05	\$0.020
500	3 lbs.	\$6.30	\$0.013

**C. Good Faith Deposits/Invoices**

Section 4(2) of the FOIA permits a public body to collect a 50% deposit of the estimated costs exceeding \$50.00 to comply with a request; and the balance before mailing requested records. Thusly, when DLEG units believe that costs to comply with a request will exceed \$50.00, an estimate should be prepared and an invoice sent the requester advising of the need for the 50% of estimated cost deposit, prior to making any copies. When all fees are paid, appropriate adjustments to actual costs can be made. A sample invoice form is enclosed that can be used for regular or "good faith" deposits.

Note: The above fee/charges are guidelines. It is noted that some DLEG units have well-established procedures for recovering costs related to FOIA/regular requests and may wish to continue to use certain procedures.

I can be reached at (517) 373-0194 regarding any questions about the above.

Enclosure

cc: Stephen Geskey  
Andy Levin  
Sharon Bommarito  
Rita Canady

DEPARTMENT OF LABOR & ECONOMIC GROWTH  
FREEDOM OF INFORMATION ACT INVOICE

NAME AND ADDRESS OF REQUESTER	BUREAU/OFFICE:			
	ACCOUNT CODE:	Index:	PCA:	
	REQUEST RECEIVED:			
	TYPE OF REQUEST <input type="checkbox"/> LETTER/SUBPOENA <input type="checkbox"/> FAX <input type="checkbox"/> E-MAIL			
REQUEST PARTIALLY DENIED      ( ) YES    ( ) NO	REQUESTED INFORMATION WILL BE:  <input type="checkbox"/> MAILED UPON RECEIPT OF PAYMENT <input type="checkbox"/> MAILED/INVOICED FOR FULL PAYMENT <input type="checkbox"/> PAID AND PICKED UP IN PERSON			
EXEMPT INFORMATION WITHHELD/REDACTED ( ) YES    ( ) NO				
EXTENDED RESPONSE NOTICE ISSUED      ( ) YES    ( ) NO				

DLEG CONTACT: Melvin Farmer, Central FOIA Coordinator (517) 373-0194  
Ottawa Building, 4<sup>th</sup> Floor, 611 W. Ottawa, Lansing, MI 48909

The FOIA provides that the department may charge a fee to comply with requests for public records. The processing fee is composed of hourly wages and benefit costs of the lowest paid employee(s) **capable** of processing the request; the duplication of records at assessed costs per page; mailing costs; and other related special costs. Prior to searching and copying requested records, the department may request full payment or 50% of the estimated costs exceeding \$50.00 with the balance required **before** mailing the records. Assessed costs are related to your request for:

INVOICE CALCULATIONS	AMOUNT
(Lowest Paid Capable Employee)	
LABOR (Locating and Duplicating):      No. of Hours _____ x Hourly Rate \$ _____	
LABOR (Examining and Extracting):      No. of Hours _____ x Hourly Rate \$ _____	
POSTAGE: (estimate)	
DUPLICATING:      No. of Pages _____ x Copying Rate Per Side \$.25	
OTHER: (overtime, audio tapes, discs, photos, security, etc.)	
Make check or money order payable to:      STATE OF MICHIGAN Remit to:      Department of Labor & Economic Growth Office Services Mailroom 7150 Harris Drive, P.O. Box 30015 Lansing, MI 48909  RETURN ORIGINAL COPY OF THIS INVOICE WITH YOUR PAYMENT.	TOTAL
	DEPOSIT*
	BALANCE TO BE PAID
<small>*PLEASE NOTE THAT IF A DEPOSIT IS REQUESTED, THE INDICATED AMOUNT IS AN ESTIMATE OF THE COST OF COMPLYING WITH YOUR REQUEST. THE ACTUAL COST MAY VARY SOMEWHAT FROM THIS AMOUNT.</small>	

Distribution: Requester, Agency, Financial Services, FOIA Coordinator

**NOTE TO FOIA COORDINATORS:**  
**UPON PAYMENT OF DEPOSIT OR BALANCE SEND COPY TO CENTRAL FOIA COORDINATOR**